

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-3424E

\*\* ,

Respondent.

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FINAL ORDER

A due process hearing was held in this case before Jessica E. Varn, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), in Lauderdale Lakes, Florida, on August 29, 2019.

APPEARANCES

For Petitioner: [REDACTED], Esquire  
School Board of Broward County  
K. C. Wright Administration Building  
600 Southeast Third Avenue, 11th Floor  
Fort Lauderdale, Florida 33301

For Respondent: Respondent, pro se

STATEMENT OF THE ISSUE

Whether the placement recommended by the educational staff on the Individual Education Plan (IEP) team, which is an exceptional student education center, is the least restrictive environment (LRE) for the student.

PRELIMINARY STATEMENT

A request for due process hearing was filed on [REDACTED], [REDACTED]. On [REDACTED], [REDACTED], a Notice of Telephonic Scheduling Conference was issued, notifying the parties that a scheduling conference would be held on [REDACTED], [REDACTED]. The telephonic conference occurred and the hearing was set for [REDACTED], [REDACTED].

The parties filed a Joint Statement of Undisputed Facts on [REDACTED], [REDACTED], and the due process hearing was held on [REDACTED], [REDACTED].

At the due process hearing, the School Board presented testimony from [REDACTED], English teacher; [REDACTED], School Counselor; [REDACTED], Intervention Specialist; [REDACTED], Behavior Specialist; [REDACTED], Psychiatrist; [REDACTED], ESE Specialist; and [REDACTED], Exceptional Student Education (ESE) Specialist. School Board Exhibits 1 through 48 were admitted into the record. Respondent presented the testimony of the student's [REDACTED], and Respondent Exhibits 1 through 3 were admitted into the record.

The Transcript of the due process hearing was filed on [REDACTED], [REDACTED]. On [REDACTED], [REDACTED], an Order Extending Final Order Deadline was entered; it memorialized the agreement made by the parties at the conclusion of the due process hearing. Proposed orders were due no later than [REDACTED], [REDACTED],

and the final order was to be entered no later than [REDACTED], [REDACTED].

Unless otherwise noted, citations to the United States Code, Florida Statutes, Florida Administrative Code, and Code of Federal Regulations, are to the current codifications. For stylistic convenience, the undersigned will use [REDACTED] pronouns in this Final Order when referring to Respondent. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to Respondent's actual gender.

#### FINDINGS OF FACT

1. The parties filed a Joint Statement of Undisputed Facts, stipulating to several facts.

#### Factual Stipulations

2. The student is [REDACTED] years old. [REDACTED] first year of high school was the 2018-2019 school year, and [REDACTED] attended School A, in a [REDACTED] setting.

3. The student was hospitalized on [REDACTED], [REDACTED], due to verbalizations of suicidal thoughts. A psychological evaluation was conducted on [REDACTED], [REDACTED], due to ongoing concerns regarding the student's behavioral and emotional challenges.

4. School staff expressed many concerns, including the student's inability to modulate [REDACTED] feelings of [REDACTED] and [REDACTED], [REDACTED] negative behaviors, [REDACTED] [REDACTED], [REDACTED] absence

from assigned areas, and [REDACTED] behaviors. As a result of these staff concerns, a psychosocial report was created on [REDACTED], [REDACTED].

5. On [REDACTED], [REDACTED], the student was hospitalized for making threats. On [REDACTED], [REDACTED], the student was made eligible for ESE under the category of [REDACTED] ([REDACTED]) and an IEP was developed.

6. On [REDACTED], [REDACTED], a Psychiatric Memorandum was developed by [REDACTED]. [REDACTED] assessed the student's emotional and personality functioning due to [REDACTED] significant emotional and academic deterioration during the 2018-2019 school year.

7. On [REDACTED], [REDACTED], an interim IEP was developed recommending that the student be placed in School B, which is a [REDACTED] school/exceptional student education center for students with [REDACTED] eligibility. A Notice of Proposal/Refusal was provided to the student's parents. On [REDACTED], [REDACTED], the parents returned the consent form indicating their disagreement with the recommendation. The educational staff determined that the student cannot receive a free and appropriate public education (FAPE) at School A, and, pursuant to Florida Administrative Code Rule 6A-6.03311(9), filed a request for a due process hearing.

Additional findings of fact

8. School A is a charter [REDACTED] and [REDACTED] school, and while both the [REDACTED] and [REDACTED] schools are located on the same plot of land, they are separate and distinct campuses. The student attended School A's [REDACTED] school, and in [REDACTED] grade, began to socially isolate [REDACTED] and [REDACTED] became less engaged in academics. Naturally, [REDACTED] grades began to decline.

9. [REDACTED] school staff suspended one of the student's electives so that [REDACTED] could complete academic work, and [REDACTED] also received academic support in a small group setting.

10. To assist in the transition from [REDACTED] school to [REDACTED] school, the [REDACTED] school counselor, the guidance director, and an intervention specialist were tasked with assisting the student.

11. One of the student's [REDACTED] school teachers testified, and described [REDACTED] as generally having a blank stare, showing no desire to complete assignments, randomly getting up and walking around the classroom, and on one occasion, [REDACTED] around. [REDACTED] reached out to an administrator because [REDACTED] suspected that the student was coming to class in an altered state. As a result of [REDACTED] report, a meeting was held with all of the student's teachers and [REDACTED] parents.

12. During the meeting, the parents rejected the notion that the student was under the influence of any type of substance

and believed that the teachers were inappropriately picking on the student, causing [REDACTED] behaviors.

13. During the month of September, the student received three Saturday detentions for skipping classes, and was eventually suspended for two school days due to [REDACTED] excessive skipping.

14. In early October, the school assigned an intervention specialist, [REDACTED], to work with the student. [REDACTED] met with the student's [REDACTED], who reported that the student was having trouble sleeping and was often having [REDACTED] at home. [REDACTED] first session with the student lasted for hours. The student shared that [REDACTED] had thought of hurting [REDACTED], and that [REDACTED] was often accused of being [REDACTED]. The district's "[REDACTED]" [REDACTED], which is an on-call mental health staff asked to assess a student when there is a concern that a student might [REDACTED] or others, was asked to evaluate the student. The YES team recommended that the student receive psychological services.

15. [REDACTED] met with the student weekly, and then much more frequently as the first quarter progressed. During the sessions, the student shared information about [REDACTED] personal life and [REDACTED] relationship struggles. [REDACTED] also described three different versions of [REDACTED], which [REDACTED] labeled [x]1, who is [REDACTED] and [REDACTED]; [x]2, who is [REDACTED] and is in [REDACTED] thoughts regularly; and [x]3, who is a [REDACTED] that [REDACTED] would like to get rid

of. [REDACTED] role-played scenarios with the student, gave the student advice, and listened. [REDACTED] described the student as academically capable but not motivated to perform any academic work.

16. During a school day in late [REDACTED], the student left the school campus with the intention to [REDACTED] by walking into traffic on a busy street. As a result of this event, the school assigned a staff escort to accompany the student at all times during the school day. If at any point the staff supervision lapsed, the student would go missing.

17. Outside of school, the student was under the care of a private therapist. After two visits with the private therapist, the student was diagnosed with [REDACTED] with [REDACTED]. [REDACTED] was prescribed medication and was scheduled for regular therapy sessions.

18. In early [REDACTED], the school staff conducted a [REDACTED] in order to identify the function of the behaviors [REDACTED] was exhibiting. The staff determined that when the student was overwhelmed by his social life, [REDACTED] isolated [REDACTED] and avoided academic tasks. As a result, [REDACTED] avoided challenges and confrontations. A [REDACTED] [REDACTED] was created for the student, which consisted of these changes: a change in [REDACTED] schedule to less rigorous classes, which provided more structure; regular,

timed visits with a staff member; a student contract, wherein the student agreed to cooperate and perform work; and a reward system for compliance.

19. On [REDACTED], [REDACTED], the student's parents consented to evaluations of the student for ESE eligibility.

20. A week later, the student exhibited [REDACTED] behavior during a session with [REDACTED]. [REDACTED] was [REDACTED] and was [REDACTED]. [REDACTED] once again expressed [REDACTED]. [REDACTED] parents were called, and [REDACTED] was voluntarily admitted to a [REDACTED] for [REDACTED].

21. At this point, the student's medication was increased, and it was noted that the student's medical family history includes a [REDACTED], [REDACTED], and [REDACTED].

22. Beginning in late [REDACTED] [REDACTED], and through the month of [REDACTED] [REDACTED], a psychosocial assessment was conducted by a social worker. The student's parent was interviewed, educational and medical records were reviewed, and the student was [REDACTED]. During the student evaluation, [REDACTED] explained that [REDACTED] contemplated [REDACTED] when [REDACTED] had [REDACTED]. [REDACTED] also reported [REDACTED] consisting of a [REDACTED] down, saying negative things about [REDACTED], and telling [REDACTED] to [REDACTED]. When asked to pretend that [REDACTED] had a magic wand and could ask for anything, [REDACTED]



replied that ■ would like to be naturally happy, accomplish something in life, and have a fairy that could ■ so that ■ did not have to ■.

23. Ultimately, the social worker concluded that the student's ■ difficulties were contributing to ■ poor academic performance and poor problem solving skills.

24. On ■, ■, a ■ was conducted because the student had posted an image on social media depicting a person ■ in a ■ in a school ■. During the investigation, other students reported that the student had discussed "■." Law enforcement conducted a forensic review of the student's cell phone, which revealed the student making statements about ■ and ■. The student was deemed to be a "■" threat ■, and a plan was put into place. The student was to check in with a staff member every morning, ■ was not allowed to bring a backpack to school, ■ was to be escorted between classes, and ■ could not leave a classroom without a campus monitor or other staff member.

25. On ■, ■, a psychoeducational evaluation was conducted. The school psychologist found that although the student's academic skills fell within expectations for ■ age, ■ academic performance had declined due to the deterioration of

█ functioning. The student was taking medicine and was in the care of a therapist, but █ continued to demonstrate █ and █ lows in █. If this situation persisted, the psychologist recommended a more structured learning environment with a █ component.

26. Just a few days later, the student was once again admitted to a █, this time involuntarily by law enforcement, because █ and █ on social media.

27. On █, █, the student was made eligible for ESE under the category of █.

28. On █, █, █ evaluated the student and recorded █ observations and recommendations in a █ memorandum. █ found the student to lack insight as to the relationship between █ health needs and █ academic performance and social judgment, and opined that the student needs █ interventions and continued █ monitoring. █ diagnosed the student with █ with █, as well as █.

29. As stated above in the stipulated facts, on █, █, an interim IEP was developed recommending that the student be placed at School B, which is a █.

[REDACTED] for students with [REDACTED] eligibility. A Notice of Proposal/Refusal was provided to the student's parents.

30. School B is a [REDACTED] exceptional student education [REDACTED] for students with [REDACTED] eligibility. There are approximately [REDACTED] at each school, a [REDACTED] student-to-teacher ratio, [REDACTED], and individualized [REDACTED] is provided as needed. The goal of the school is to [REDACTED] the students and then return them to a [REDACTED] school. There are approximately [REDACTED] high school students, and only [REDACTED] to [REDACTED] students in each class. In each class, there is a teacher and a paraprofessional, and each student is assigned a therapist.

31. On [REDACTED], [REDACTED], the parents returned the consent form indicating their disagreement with the recommendation.

32. On [REDACTED], [REDACTED], a licensed clinical psychologist who had been seeing the student since [REDACTED] [REDACTED], wrote a brief letter indicating that the student had shown significant improvement and that a change in [REDACTED] environment might negatively impact [REDACTED] progress. Similarly, on [REDACTED], [REDACTED], the student's private psychiatrist, who had treated the student since [REDACTED] of the same year, wrote a brief letter indicating that a *negative* change in the student's environment could adversely affect [REDACTED] [REDACTED] goals. There is no evidence establishing that either of these two providers consulted with school staff, reviewed

educational records, or knew the characteristics of School B or School A. Additionally, there is no evidence to suggest that School B is a negative change in environment; to the contrary, the evidence establishes that School B meets the student's current needs.

33. The greater weight of the evidence establishes that, at this juncture, the student cannot receive a FAPE at School A, despite all the interventions, aids and accommodations provided by the school staff. The student would benefit greatly from a [REDACTED] environment; which School B is designed to provide.

#### CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 1003.57(1)(a) and 1003.5715(5), Fla. Stat., and Fla. Admin. Code R. 6A-6.03311(9)(u).

35. 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).

36. 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 is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990). See also Andrew F. v. Douglas Cnty. Sch. Dist. RE-1, 197 L. Ed. 2d 335, 2017 U.S. LEXIS 2025, 137 S. Ct. 988, 85 U.S.L.W. 4109, 26 Fla. L. Weekly Fed. S 490 (U.S. Mar. 22, 2017).

37. Parents and children with disabilities are accorded 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 are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to 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 FAPE to such child. 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

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

Special education and related 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).

39. "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).

40. 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.

41. In addition to requiring that school districts provide students with FAPE, the IDEA further gives directives on students' placements or education environment 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.

42. Pursuant to 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 Florida

Department of Education has enacted rules to comply with the above-referenced 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). In Florida, a school district may not place a student in an exceptional student education center without parental consent. Where, as here, the parent does not consent, the school district may not proceed with such placement, unless the school district obtains "approval" through a due process hearing. See § 1003.5715, Fla. Stat. Section 1003.5715 does not abrogate any parental right identified in the IDEA and its implementing regulations. § 1003.5715(7), Fla. Stat.

43. In determining the educational placement of a student with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a)(1). Additionally, the student's placement must be determined at least annually, based on the student's IEP, and as close as possible to the student's home. 34 C.F.R. § 300.116(b).

44. With the LRE directive, "Congress created a statutory preference for educating handicapped children with non-handicapped children." Greer v. Rome City Sch. Dist., 950 F.2d



688, 695 (11th Cir. 1991)(opinion withdrawn on procedural grounds and reinstated, in pertinent part; see 956 F.2d 1025, 1026-27; see also 967 F.2d 470). "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 [REDACTED] special needs." Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1044 (5th Cir. 1989).

45. 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.

Id. at 1048.

46. In Greer, the Eleventh Circuit adopted the Daniel two-part inquiry. Greer, 950 F. 2d at 696. 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 ■ 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. Id. at 697.

47. Here, the greater weight of the evidence establishes that the student cannot be satisfactorily educated in the regular classroom at School A, with the use of supplemental aids and services. The greater weight of the evidence also established that the student will receive the educational benefits ■ needs at this point in ■ educational career if ■ is placed at School B, which is an exceptional student education ■ designed to meet the needs of students with an ■ eligibility.

48. As to the last two factors, there was little to no evidence presented regarding the effect the presence of the student at School A had on other students, or of the cost of the supplemental aids and services provided at School A.

49. As to the second step, which examines whether School A has mainstreamed the student to the maximum extent appropriate, the evidence in the record is uncontroverted. Absent from the record was any suggestion that School A had failed to provide all

the supplemental aids and services that could possibly meet the student's needs.

50. Accordingly, the educational staff's recommendation that the student be placed in School B, which is an exceptional student education [REDACTED], is approved as the least restrictive environment for the student at this juncture.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board's proposed change of the student's placement from a [REDACTED] class to an exceptional student education [REDACTED] is approved.

DONE AND ORDERED this 26th day of September, 2019, in Tallahassee, Leon County, Florida.

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JESSICA E. VARN  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
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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).