STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 23-3842E

**,

Respondent.
_______________________________________/

FINAL ORDER

This case came before Administrative Law Judge ("ALJ") Sara Marken of the Division of Administrative Hearings ("DOAH") for final hearing held live in Fort Myers, Florida, on November 29, 2023.

APPEARANCES

For Petitioner: Corey Huffman, Esquire
School District of Lee County
2855 Colonial Boulevard
Fort Myers, Florida 33966

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

STATEMENT OF THE ISSUE

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

PRELIMINARY STATEMENT

A request for a due process hearing by Petitioner was filed with DOAH on October 5, 2023. A Case Management Order was issued on October 6, 2023. A telephonic scheduling conference was held on October 26, 2023. The parties agreed to schedule the hearing on November 29 and 30, 2023, and to waive the final order deadline.

The final hearing was held on November 29, 2023. Petitioner presented the testimony of the following witnesses: [redacted], student pediatrician; [redacted], behavior analysist; [redacted], behavior specialist; [redacted], assistant principle; [redacted], behavior specialist; [redacted], school counselor; and [redacted], school psychologist. Petitioner's Exhibits 1 through 10 were admitted into evidence.

Respondent presented the testimony of [redacted], parent liaison, and the student testified on his own behalf. Respondent's Exhibit 1 was admitted into evidence.

The final hearing Transcript was filed at DOAH on January 3, 2024. The parties agreed that proposed final orders were due on January 12, 2024. Petitioner filed a timely Proposed Final Order, which was considered in the drafting of this Final Order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the challenge to the continued placement. For stylistic convenience, the undersigned will use male pronouns in this Final Order when referring to Respondent. The male pronouns are neither intended, nor should be interpreted, as a reference to Respondent's actual gender.

FINDINGS OF FACT

1. At the time of the due process hearing, the student was a -grade student at School B, a school within the Lee County School District ("District").

2. The student is eligible for ESE in the categories of Autism Spectrum Disorder and Other Health Impaired.

3. The student has been diagnosed with Disruptive Mood Dysregulation Disorder. According to his treating pediatrician, the student can pose a danger to himself or others, and would benefit from an educational placement with individuals specifically trained to educate students with challenging behaviors.

4. The student's disability affects his ability to regulate his emotions. The student is intelligent and, when his behaviors do not interfere, is able to succeed academically.

5. The District conducted a Functional Behavior Assessment in . The assessment identified elopement, classroom disruptions, and aggression as behaviors which impeded the student's ability to access his education.

6. Based on the results of the Functional Behavior Assessment, the District created a Positive Intervention Plan. The plan includes interventions to be used in the classroom to assist in modifying the maladaptive behaviors and increase the desired replacement behaviors.

7. The student's Positive Intervention Plan is intensive, and it includes numerous strategies that would be very difficult to implement in a traditional high school setting.

8. The student attended School A during the school year. School A is a traditional high school. The student was assigned to the intensive intervention program for students with severe behavioral issues.

9. The students in the intensive intervention program begin their school day in the intensive intervention room and would then attend their scheduled classes with general education students. Staff from the program would check-

in with the students throughout the day. The room is there to provide the students with support to allow them to succeed in their other classes.

10. The student would experience a major behavior crisis at least three times a week and would, on average, experience minor issues several times throughout the school day.

11. Fifty percent of the time, and with assistance, the situation would resolve and the student would be able to return to class. The other 50 percent of the time, the student would remain in the intensive intervention room or would go home.

12. At the beginning of the [redacted] school year, the student's behavior challenges mostly involved self-harm. The student would engage in self-injurious behavior and would express suicidal thoughts.

13. As the school year progressed, the behaviors began to manifest differently. The student became threatening and aggressive towards staff and other students. There were several incidents were the student physically attacked staff members, and where the school resource officer determined that the student needed to be mechanically restrained in order to ensure his safety or the safety of others.

14. The student's behavior frequently disrupted the learning environment of his peers. There were several instances where all of the students would be removed from the classroom to ensure their safety.

15. Staff at School A persuasively that they tried everything within their resources to provide the student with the support needed to succeed; unfortunately, the services and supports available at School A were insufficient.

16. During the [redacted] school year, the student was not accessing his education. Staff at School A spent significantly more time dealing with the student's behavior and mental health than with his academics.

17. The student's Individualized Education Plan ("IEP") team met in April [redacted] and recommended ESE center school placement. The team

determined that the student needed an increased level of support in order to access his education. The required level of support could be provided at School B. At the time, the parents reluctantly agreed to the placement at School B.

18. School B is an ESE center school, a separate public school to which nondisabled peers do not have access. § 1003.57(1)(a)1.a., Fla. Stat. School B provides more services than any other school in the District. All of the teachers are ESE certified, specializing in behavior. On campus, there is a behavior specialist, mental health counselor, guidance counselor, psychologist, and multiple security guards. All of the staff is trained in de-escalation strategies.

19. School B's program is highly structured and is designed for students with challenging behaviors. Approximately 150 students attend the school. On average, there are five to seven students per classroom. Each class has a teacher and a teacher's aide.

20. School B works on a level system, with seven levels. The students are required to earns points on a daily basis in order to progress through the levels. Points are earned for following classroom rules and meeting IEP behavioral goals. Once a student reaches level seven and remains on level seven for four weeks, the school will recommend that the student exit the program.

21. The student began the [redacted] school year at School B. The student did relatively well at the beginning of the year. He was able to stay on task and complete his academic work. The student did experience three major disciplinary incidents. After the third incident, the student did not return to School B. All in all, the student attended School B for six weeks and has not attended any school since.

22. The IEP team met again in September and October of [redacted] to discuss educational placement. The school-based team members ultimately

recommended that the student remain at School B; however, the parents did not provide consent for the placement.

23. The student's time at School B was insufficient to make meaningful progress and gain the skills and strategies to successfully manage his behavior and return to a traditional school setting. The preponderance of the evidence demonstrates that the placement at an ESE center school mainstreams the student to the maximum extent appropriate, and, as such, placement at School B is approved.

CONCLUSIONS OF LAW

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

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

26. The IDEA provides directives on students' placements or education environments in the school system. Specifically, 20 U.S.C. § 1412(a)(5)(A) provides, as follows:

> Least restrictive environment.
>
> (A) In general. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

27. With the LRE directive, "Congress created a statutory preference for educating handicapped children with nonhandicapped children." *Greer v. Rome City Sch. Dist.*, 950 F.2d 688, 695 (11th Cir. 1991). "By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the [IDEA], school districts must both seek to mainstream handicapped children and, at the same time, must tailor each child's educational placement and program to his special needs." *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989).

28. In *Daniel*, the fifth circuit set forth a two-part test for determining compliance with the mainstreaming requirement:

> First, we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. *See* § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.

Daniel, 874 F.2d at 1048.

29. In *Greer*, the eleventh circuit adopted the *Daniel* two-part inquiry. In determining the first step, whether a school district can satisfactorily educate a student in the regular classroom, several factors are to be considered: (1) a comparison of the educational benefits the student would receive in a regular classroom, supplemented by aids and services, with the benefits he will receive in a self-contained special education environment; (2) what effect the presence of the student in a regular classroom would have on the education of other students in that classroom; and (3) the cost of the supplemental aids and services that will be necessary to achieve a satisfactory education for the student in a regular classroom. *Greer*, 950 F.2d at 697.

30. The preponderance of the evidence demonstrated that the student requires levels of supports and services that are not offered in a traditional high school setting. The better evidence establishes the student still needs to

gain skills and strategies to successfully manage his behavior in order to access his education.

31. Additionally, deference should be paid to the educators involved in education and administration of the school system. *A.K. v. Gwinnett Cnty. Sch. Dist.*, 556 Fed. Appx. 790, 792 (11th Cir. 2014) ("In determining whether the IEP is substantively adequate, we 'pay great deference to the educators who develop the IEP.'") (quoting *Todd D. v. Andrews*, 933 F.2d 1576, 1581 (11th Cir. 1991)). As noted in *Daniel*, "[the undersigned's] task is not to second guess state and local policy decisions; rather, it is the narrow one of determining whether state and local officials have complied with the [IDEA]." *Daniel,* 874 F.2d at 1048. Staff credible testified that a traditional setting did not offer the supports and services the student required.

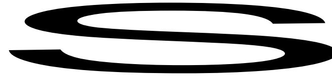
32. It is undisputed that the proposed placement does not offer the student a traditional high school experience nor interaction with his nondisabled peers; however, it is clear from the evidence that the student's history of self-injuries and aggressive behaviors warrants placement at an ESE center school.

33. Placement at School B mainstreams the student to the maximum extent possible, and therefore, complies with the mandate that the student be educated in the LRE. *See Orange Cnty. Sch. Bd. v.* **, Case No. 20-4487E, at *14 (Fla. DOAH Jan. 19, 2021) (finding that the student's continuous disruptive and aggressive behavior warranted placement at the special day school).

ORDER

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

DONE AND ORDERED this 22nd day of January, 2024, in Miami, Dade County, Florida.



SARA M. MARKEN
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of January, 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).