STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 24-1192E

LEON COUNTY SCHOOL BOARD,

Respondent.
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FINAL ORDER

On May 21, 2024, this case came before Administrative Law Judge Nicole D. Saunders of the Division of Administrative Hearings (DOAH) for a final hearing held live in Tallahassee, Florida.

APPEARANCES

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

For Respondent: Opal L. McKinney-Williams, Esquire
Pittman Law Group
1028 East Park Avenue
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether the School Board (School Board) violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*, in failing to provide Petitioner with an appropriate educational placement in the least restrictive environment (LRE).

PRELIMINARY STATEMENT

On March 21, 2024, Petitioner filed a request for due process hearing (Complaint) with the School Board, which the School Board forwarded to DOAH on March 26, 2024. On March 27, 2024, the undersigned issued a Case Management Order, detailing the deadlines and procedures governing this case. Then, on April 8, 2024, the School Board filed a Notice of Filing Prior Written Notice as well as its First Status Report (Status Report). In the Status Report, the School Board stated that the parties held a resolution meeting on April 5, 2024, and agreed to reconvene on April 19, 2024—a date two weeks outside the resolution period deadline.

Accordingly, on April 12, 2024, the undersigned issued an Order extending the final order deadline by two weeks, to June 18, 2024. The School Board filed its Second Status Report on April 19, 2024, requesting that the matter be set for final hearing as the parties had reached an impasse. The undersigned conducted a telephonic scheduling conference on April 29, 2024. During that conference, the parties agreed to set this matter for a live final hearing on May 21, 2024. The undersigned issued a Notice of Hearing the next day; and on May 14, 2024, the parties filed their Joint Statement of Undisputed Facts.

The hearing occurred as scheduled. At the hearing, Petitioner testified on her own behalf, but called no other witnesses. The undersigned also admitted Petitioner's Exhibits 1 through 4, 6, and 7 into evidence.

The School Board called no witnesses. But, the undersigned, with Petitioner's consent, admitted School Board's Exhibit 2 into evidence.

On May 31, 2024, the final hearing Transcript was filed with DOAH. The parties agreed to file proposed final orders by June 4, 2024. Both parties timely submitted proposed orders, which were considered in preparing this Final Order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time Petitioner filed the Complaint. For stylistic convenience, this Final Order uses female pronouns when referring to Petitioner. These pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. Petitioner is a [redacted]-year-old [redacted] student who enjoys listening to music and playing with toys. She has been diagnosed with Mosaic Trisomy 9 and unspecified lack of expected normal physiological development. These disabilities impair Petitioner's ability to learn, communicate, feed herself, follow directions, and independently ambulate.

2. Because of these challenges, as well as her age, Petitioner is eligible for special education under the category of developmental delay, with physical, occupational, and language therapy as related services. Also, Petitioner's individualized education plan (IEP) calls for her to participate in adaptive Physical Education (PE).

3. Despite her disabilities, Petitioner can walk short distances using a walker or gait trainer, maneuver in and out of a regular chair, reach for items, and make noises.

4. Petitioner's neighborhood school is [redacted] Elementary ([redacted]), a traditional public school. But while Petitioner is enrolled at [redacted], she has never attended. This is due, in large part, to her parent's belief that Petitioner's needs exceed [redacted] resources. As Petitioner's parent testified at the final hearing:

> I fully understand [her] capabilities and watched [her], but [she] is 100% vulnerable. And as I said, I feel [she] should be in an environment where all of the staff is trained to treat [her] accordingly. Not where [she's] looked at funny and there is one teacher to actually respect [her] and [her] abilities, but where everybody is known to treat those children the right way.

5. Thus, Petitioner's parent wants her to attend [redacted], an exceptional student education (ESE) center school. Petitioner's placement at [redacted] would virtually eliminate her interaction with her nondisabled peers.

6. Toward the end of August [redacted], Petitioner's parent brought her to [redacted] to meet staff and tour the school. But, according to Petitioner's parent, this meeting was largely a formality. She had determined that [redacted] could not accommodate her daughter. Thus, her goal in attending the meeting was for the School Board to transfer Petitioner to [redacted] as soon as possible.

7. Over the next few months, the School Board evaluated Petitioner to determine her educational needs. Then, on December 8, [redacted], Petitioner's IEP team met to craft her IEP. During that meeting, the IEP team—consisting of Petitioner's parent, [redacted] principal, a physical therapist, a speech pathologist, and several others—discussed Petitioner's unique strengths and challenges. The team reviewed, among other things, Petitioner's curriculum and learning environment, social and emotional behavior, independent functioning, medical information, and communication.

8. Overall, the school-based members of the IEP team agreed that Petitioner's LRE was a separate classroom within [redacted] with support from a special education teacher, occupational therapist, speech language pathologist, physical therapist, and general education teacher. Yet Petitioner's parent remained steadfast, insisting the School Board

transfer Petitioner to [redacted]. When the rest of the IEP team disagreed, Petitioner's parent filed the Complaint.

9. At the final hearing, Petitioner's parent presented a letter from Petitioner's physical therapist, explaining how [redacted] was an "ideal" educational setting for her. That said, the physical therapist did not testify at the final hearing, nor did his letter discuss whether Petitioner's current placement is appropriate.

10. Ultimately, the greater weight of the evidence shows that the School Board provided Petitioner with an appropriate educational placement in the LRE.

CONCLUSIONS OF LAW

11. 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).

12. As the party seeking relief, Petitioner bears the burden of proving each issue raised in the 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).

13. 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).

14. 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).

15. The School Board, a local educational 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.*

16. 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).

17. In the Complaint, Petitioner asserts that the School Board failed to provide her with an appropriate placement in the LRE. Put differently, Petitioner argues that her current placement cannot meet her needs. Petitioner failed to prove this claim.

18. The IDEA provides directives on students' placements or educational environments in the school system. 20 U.S.C. § 1412(a)(5)(A) provides:

> Least restrictive environment. 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.

19. Under 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 have a continuum of alternative placements available to meet the needs of children with disabilities for special education and related services. 34 C.F.R. § 300.115. Florida's Department of Education has enacted rules to comply with the LRE mandate. *See* Fla. Admin. Code Rs. 6A-6.03028(3)(i) and 6A-6.0311(1).

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

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

22. 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.

23. 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. *Id.*

24. Moreover, deference should be paid to those 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.

25. Applying these principles here, Petitioner presented no persuasive evidence that the School Board failed to provide her an appropriate placement within the LRE. It is undisputed that the School Board offered Petitioner a placement in a separate classroom at [redacted] and that the school-based members of the IEP team concluded that [redacted] could implement Petitioner's IEP. They reached this conclusion after reviewing evaluations and discussing her disabilities and unique needs. While Petitioner's parent's concerns are understandable, she presented no evidence that [redacted] is an

inappropriate placement. The evidence, thus, does not support Petitioner's requested relief of placement at [redacted].

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner has failed to meet her burden of proof. As a result, the relief requested in the Complaint is denied.

DONE AND ORDERED this 10th day of June, 2024, in Tallahassee, Leon County, Florida.

NICOLE D. SAUNDERS
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
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this 10th day of June, 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).