

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

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Petitioner,

vs.

Case No. 25-5472E

ORANGE COUNTY SCHOOL BOARD,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

This case came before Administrative Law Judge (ALJ) Sara Marken of the Division of Administrative Hearings (DOAH) for final hearing via Zoom conference on January 16, 2026.

APPEARANCES

For Petitioner: Jamison Jessup, Qualified Representative  
My Child Wins, Educational Advocates, LLC  
557 Noremac Avenue  
Deltona, Florida 32738

For Respondent: Sarah Joan Kopesky, Esquire  
School Board of Orange County, Florida  
445 West Amelia Street  
Orlando, Florida 32801

STATEMENT OF THE ISSUES

Whether the student's individualized education plan (IEP) included the appropriate accommodations to provide the student with a free and appropriate public education (FAPE);

Whether the parents were denied meaningful participation in the educational planning for the student; and

What remedies, if any, are appropriate?

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) with the School Board on October 13, 2025, which the School Board forwarded to DOAH the next day. The case was initially assigned to ALJ Jessica Varn. ALJ Varn issued a Case Management Order on October 17, 2025. On October 23, 2025, Mr. Jamison Jessup filed a Motion to Recognize Qualified Representative (Motion) and ALJ Varn granted the Motion on the same day. Additionally, on October 23, 2025, Respondent filed a Response to Petitioner's Due Process Complaint. On October 24, 2025, Respondent filed a Notice of Insufficiency and Motion to Dismiss. That same day, ALJ Varn issued a Notice of Telephonic Scheduling Conference for October 28, 2025. ALJ Varn held the telephonic scheduling conference as scheduled and issued an Order finding the Complaint sufficient. At the scheduling conference, the parties agreed to schedule the final hearing for January 16, 2026. On November 4, 2025, Petitioner filed an Opposition to Respondent's Motion to Dismiss. ALJ Varn issued an Order Denying the Motion to Dismiss on November 12, 2025. This matter was transferred to ALJ Nicole Saunders on December 31, 2025. On January 1, 2026, this matter was transferred to the undersigned for all further proceedings.

The undersigned conducted the final hearing as scheduled. The undersigned admitted Petitioner's Exhibits A and C through F into evidence. Petitioner presented the testimony of [REDACTED], educational advocate; [REDACTED], Board-Certified Behavior Analyst (BCBA); Petitioner's parents; and [REDACTED], psychologist.

The undersigned admitted Respondent's Exhibits A, C, E, L through N, and P through R into evidence. Respondent presented the testimony of

████████████████████, school counselor; ██████████, teacher; ██████████, teacher; ██████████, teacher; ██████████, teacher; ██████████, Staffing Specialist; ██████████, Staffing Specialist; ██████████, Staffing Specialist; ██████████, Staffing Specialist; ██████████, Senior Administrator of Exceptional Student Education (ESE) Policy and Procedures; ██████████, Program Administrator of ESE Supplemental Services, Speech and Language; ██████████, Director ESE Policy and Procedures; ██████████, Director of Student Enrollment; and ██████████, Senior Director for ESE.

At the end of the due process hearing, the parties agreed to file proposed final orders 30 days after the Transcript was filed with DOAH, and the undersigned would issue the Final Order 30 days after the proposed final orders were filed. The Transcript of the due process hearing was filed on February 2, 2026. On March 4, 2026, Respondent filed a Motion to Extend Proposed Final Order Due Date (Motion to Extend). On the same day, the undersigned granted the Motion to Extend, extending the deadline for proposed final orders to March 9, 2026, and the Final Order deadline to April 8, 2026. The parties both timely filed proposed final orders, which the undersigned considered in drafting this Final Order.

Unless otherwise indicated, all rule and statutory references refer to the version in effect at the time of the alleged violations. For stylistic convenience, the undersigned uses male pronouns in this Final Order when referring to Petitioner. The male pronouns neither intend, nor should anyone interpret them, as a reference to Petitioner's actual gender.

## FINDINGS OF FACT

1. At the beginning of the due process hearing, the parties stipulated to these facts:

### Stipulated Facts

2. Petitioner is a student with disabilities under the Individuals with Disabilities Education Act (IDEA) and has an IEP.

3. Petitioner attended [REDACTED] for the [REDACTED].

4. Petitioner is currently attending [REDACTED].

### Findings of Fact based on the record

5. The student is a ninth-grade student. He is eligible for ESE services in the categories of Autism Spectrum Disorder (ASD) and Language Impaired (LI).

6. At the heart of this matter is the student's Applied Behavior Analysis (ABA) Therapy. He has been receiving ABA therapy from a very young age. At first, he received therapy at school, then a combination of school and home, and, at the time of the due process hearing, he received ABA therapy exclusively at home from a private provider.

7. In coordinating the student's therapy, the therapy provider adheres to strict scheduling practices—in part to ensure the student's health insurance will pay for the services. The provider and the family establish session times based on the student's availability, but those times must comply with the provider's requirements. Therapists do not wait if the student is late, as insurance will not cover that time.

8. The provider offers different availability depending on whether a student attends middle or high school. During the student's [REDACTED] school years, the provider offered therapy before and after school, allowing greater scheduling flexibility. After the student transitioned to [REDACTED] school, however, the provider limited available sessions to after-school hours within a fixed afternoon window of 2:30 p.m. to 4:30 p.m.

9. On March 11, [REDACTED], the IEP team met to conduct an annual review of the student's IEP, a reevaluation, and to discuss his transition to [REDACTED] school. Both parents attended the meeting virtually, as did their educational advocate, [REDACTED], and the student's private BCBA, [REDACTED].

10. The team reviewed teacher input, evaluated the student's progress toward IEP goals, analyzed state assessment results, and considered private behavior therapy data as part of the reevaluation process. Based on this information, the team determined that a formal reevaluation was not necessary.

11. The IEP team determined that the student would receive the following special education services: the student would receive language therapy for 30 minutes weekly, and the student would also receive specialized instruction through learning strategies for one period daily in the ESE classroom. In addition, the IEP includes support facilitation services for English-language arts (ELA) and math, each for one period daily in the general education classroom.

12. Additionally, the team determined that the student would receive transportation, supervision during transitions between classes, and one-to-one paraprofessional support in all core classes, including math, ELA, science, and social studies, as related services.

13. When discussing what high school the student would be attending, the parents made a unilateral statement that the student would be attending [REDACTED].

14. The student's home address places him in the zone for [REDACTED], not [REDACTED]. Before the [REDACTED] school year, the School Board zoned him for [REDACTED], which his siblings attended. The School Board subsequently built [REDACTED] to relieve overcrowding at [REDACTED].

15. Somewhat conflicting evidence was presented at the final hearing regarding the distance between the student's home and both high schools.

Better evidence established that [REDACTED] is slightly closer to the student's home.

16. At the IEP meeting, there was no further discussion regarding which [REDACTED] school the student would be attending.

17. The student's parent submitted three transfer requests through the School Board's website. First, the parent applied for a psychological transfer in April [REDACTED], and the School Board denied the request after finding insufficient evidence to support it. The parent then submitted a second psychological transfer request, including a doctor's report, but the School Board denied that request for the same reasons. Finally, the parent applied for a proximity transfer based on [REDACTED] closer proximity to the home, however, the School Board denied the request because the family did not meet the proximity criteria and [REDACTED] was at or near enrollment capacity.

18. The School Board processes such transfer requests through its student enrollment office and requires parents to pursue a separate appeal after a denial; the parent attempted to follow up, including making calls and leaving messages, but the parent did not complete an appeal through the designated office.

19. The student began the [REDACTED] school year at [REDACTED]. The student's longer commute to [REDACTED] has interfered with his ability to arrive home in time for scheduled sessions, leading to missed therapy.

20. To support the student's timely arrival home for therapy, the School Board permitted early pickup at 2:10 p.m. It authorized the parent to use the bus loop instead of the regular car line to minimize traffic delays.

21. The student has demonstrated academic progress while attending [REDACTED]. While enrolled in honors and Advanced Placement classes, he earned grades ranging from A to C. Teachers described him as academically focused, hardworking, participating in class, and demonstrating increasing independence.

22. He also made progress on his IEP goals; for example, his reading assessment scores averaged 73%—almost approaching the mastery level of 75%.

23. The student has also exhibited positive behavioral and social functioning in the school setting. Teachers described him as well-behaved, respectful, and polite, with appropriate and positive interactions with peers and staff. He remained on task, followed directions, and participated in classroom and group activities without withdrawal or disruption. Although he occasionally appeared nervous before tests, teachers did not observe significant anxiety or behavioral concerns in the school environment. Overall, the student grew socially, transitioning from a more reserved demeanor to initiating interactions and engaging more confidently with peers.

24. The greater weight of the evidence did not establish that the School Board denied the parents the opportunity to meaningfully participate in the development of the student's IEP. Instead, the evidence showed that the parents attended the IEP meeting with their advocate and private provider, and that the team considered the available data and input when developing the IEP. Finally, although the parents sought a different school placement to facilitate the student's access to private therapy, there was insufficient evidence to establish that the requested accommodation was necessary for the student to receive a FAPE.

#### CONCLUSIONS OF LAW

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

26. 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).

27. 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).

28. In enacting the 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.*, 701 F.3d at 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, contingent on each agency’s compliance with the IDEA’s procedural and substantive requirements. *Doe v. Ala. State Dep’t of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

29. 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).

30. 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.J. v. Muscogee Cnty. Sch. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, the school board denies a student FAPE only when a 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).

31. Petitioner argues that the School Board denied the student's parents an opportunity to meaningfully participate in the IEP meeting by declining to discuss the student's [REDACTED] school assignment further and by predetermining that it would not approve a change in school assignment as an IEP accommodation.

32. 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 County School Board*, 757 F.3d 1173 (11th Cir. 2014). 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." *Id.* 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." *Id.* 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"); *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed. App'x 342, 344 (9th Cir. 2007) (explaining that when

determining predetermination, a trier of fact must make findings on the school district's predetermined plan and its unwillingness to consider alternative options).

33. That said, “[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 views do not “obstruct the parents’ participation in the planning process.” *R.L.*, 757 F.3d at 1188.

34. 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.* (citing *Doyle v. Arlington Cnty. Sch. Bd.*, 806 F. Supp. 1253, 1262 (E.D.Va. 1992)). The inquiry into whether predetermination occurred is inherently fact-intensive, but it should identify those cases in which parental participation is meaningful and those in which it is merely a formality. *R.L.*, 757 F.3d at 1189.

35. The IEP team discussed the student's █████ school assignment only briefly. However, the greater weight of the evidence does not establish that the School Board prevented the parents from further addressing the assignment or any accommodation.

36. The remaining issue centers on the student's school assignment and whether an accommodation changing his school assignment was required to provide FAPE in light of his individual needs.

37. To satisfy the IDEA's substantive requirements, school districts must provide all eligible students with FAPE, which is defined as:

[S]pecial education services 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).

38. 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 to be used to evaluate the child’s progress. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. “The IEP is the centerpiece of the statute’s education delivery system for disabled children.” *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 108 S. Ct. 592 (1988)). “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Id.* (quoting *Bd. of Educ. v. Rowley*, 458 U.S. at 181).

39. In *Endrew F.*, the Supreme Court held that “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” 137 S. Ct. at 999. As discussed in *Endrew F.*, “[t]he ‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials,” and that “[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.” *Id.*

40. Most importantly, the IDEA provides that an IEP must be individualized to the student and include measurable annual goals and services designed to meet each of the educational needs that result from the

student's disability. 20 U.S.C. § 1414(d)(1)(A)(i)(II); *Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist. #221*, 375 F.3d 603, 613 (7th Cir. 2004) (explaining that an IEP must respond to all significant facets of the student's disability, both academic and behavioral); *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8th Cir. 2003) ("We believe, as the district court did, that the student's IEP must be responsive to the student's specific disabilities").

41. In this case, the IEP included all of the required components—present levels of academic achievement performance, measurable annual goals, specially designed instruction, related services, and a placement determination. Petitioner does not argue otherwise. The question centers on whether the IEP, at the time it was developed, was reasonably calculated to enable the student to make progress in light of his circumstances, not whether it is ideal or incorporates every parental preference. *See Andrew F.*, 137 S.Ct. at 999. The evidence reflects that the IEP team reviewed relevant data, including teacher input, progress toward IEP goals, and assessment results, and developed an IEP that provides services and supports tailored to the student's needs. Although the parents sought a different school assignment to facilitate access to private therapy, the greater weight of the evidence does not establish that the requested accommodation was necessary for the student to make progress in light of his circumstances.

42. In sum, Petitioner failed to prove, by a preponderance of the evidence, that the School Board denied the student FAPE.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy his burden of proof related to the claims asserted in Petitioner's Complaint. All requests for relief are DENIED.

DONE AND ORDERED this 7th day of April, 2026, in Miami, Dade County, Florida.

~~Case No. 25-5000E~~

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SARA M. MARKEN  
Administrative Law Judge  
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Filed with the Clerk of the  
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**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).