STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case Nos. 18-4570EDM

PALM BEACH COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A final hearing was held in this case before Diane Cleavinger, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on [redacted], in West Palm Beach, Florida.

APPEARANCES

For Petitioner: Petitioner, pro se
(Address of Record

For Respondent: [redacted], Esquire
Palm Beach County School Board
Post Office Box 19239
West Palm Beach, Florida 33416-9239

STATEMENT OF THE ISSUE

The issue for determination in this proceeding is whether the Student's conduct during the summer of [redacted], that constitutes a violation of the student code of conduct, was a manifestation of [redacted] disability.

PRELIMINARY STATEMENT

On [redacted], Respondent conducted a [redacted] review, at the conclusion of which the team determined that Petitioner's act of [redacted] did not constitute a [redacted] of [redacted] disability. Petitioner's parent was dissatisfied with the team's decision and on [redacted], filed a request for an expedited due process hearing. The request for hearing was forwarded to DOAH for hearing. By agreement of the parties, the final hearing was scheduled for [redacted].

The final hearing was held, as scheduled. At the hearing, Petitioner's parent testified on behalf of the Student and called one additional witness. Petitioner did not introduce any exhibits into evidence. Respondent did not offer the testimony of any witnesses and did not introduce any exhibits into evidence.

At the conclusion of the final hearing, the parties stated that they did not intend to file proposed final orders in this action. Given the parties' statements regarding proposed final orders and under Florida Administrative Code Rule 6A-6.03312(7)(c), the deadline for the final order in this matter was established as [redacted].

In regards to this Final Order, unless otherwise indicated, all rule and statutory references contained in this Final Order are to the version in effect at the time of the alleged violation. Additionally, for stylistic convenience, the undersigned will use [redacted] pronouns in this Final Order when referring to the Student. The [redacted] pronouns are neither intended, nor should be interpreted, as a reference to the Student's actual gender.

FINDINGS OF FACT

1. The Student is currently [redacted] years old. [redacted] is a student who qualifies for exceptional student education (ESE). [redacted] documented exceptionality is [redacted] ([redacted])-[redacted] ([redacted]).

2. During the [redacted]-[redacted] school year, the Student was in [redacted] grade and attended School A, a public [redacted] school in [redacted] County, Florida. At the conclusion of that year the Student was promoted to [redacted] grade.

3. At all times material, the Student had an Individual Educational Plan (IEP) that was consented to by the Student's parent. There was no evidence regarding the contents of the Student's IEP. Further, there was no challenge to the implementation of the Student's IEP.

4. The evidence showed that in the past, the Student's disability was [redacted] through [redacted]. However, due to

medication prescribed to the Student for [redacted], the Student is no longer [redacted]. In fact, the Student in the past has been a [redacted] student with "[redacted]" grades and has not been [redacted] at school.

5. Sometime during the summer of [redacted], the Student made a [redacted] on [redacted] which violated section 1006.13(3)(b), Florida Statues, establishing a zero tolerance policy for [redacted] made by students involving a school. The exact nature of the [redacted] made by the Student was not established by the evidence. However, the parent admitted there was a [redacted] made. Additionally, as required by the above-referenced statute, the Student's action was reported to [redacted] for possible [redacted].

6. From [redacted] through [redacted], [redacted], the Student was [redacted] to a [redacted] and [redacted] with [redacted].

7. Around [redacted], [redacted], prior to the start of school, a school [redacted] was issued to the Student for the [redacted]. A [redacted] meeting was held on [redacted], [redacted]. There were no procedural challenges raised to the process followed by the School Board in setting or conducting the meeting. The team determined that the Student's [redacted] was not caused by, or had a direct and substantial relationship to, the child's disability, [redacted], and that the [redacted] in question

was not the direct result of Respondent's failure to implement the IEP. Thereafter, the IEP team met and determined that the Student should not be [redacted] as section 1006.13(3)(b) permits, but should be placed in School B, an [redacted], for [redacted]-grade year ([redacted]-[redacted]). There was no evidence that demonstrated the team's [redacted] decision was in error. Further, there was no evidence that demonstrated the Student's threat was related to [redacted] disability.

8. After the [redacted], the State Attorney, on [redacted], "no filed" the pending [redacted] action against the Student, thereby ending the [redacted] case against the Student. However, the action by the State Attorney had no impact on the School Board's and IEP team's decision to place the Student in School B. More relative to this case, the State Attorney's action does not impact the [redacted] team's decision that the Student's [redacted] was not related to [redacted] disability.[1/]

CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. 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 with respect to 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 Education of Children with Disabilities, 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. 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).

12. 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 free appropriate public education to such child." 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

13. School districts have certain limitations on their ability to remove disabled children from their educational placement following a behavioral transgression. Specifically, the IDEA provides that where a school district intends to place a disabled child in an alternative educational setting for a period of more than ten school days, it must first determine that the child's behavior was not a manifestation of his disability. 20 U.S.C. § 1415(k)(1)(C). Pursuant to the IDEA's implementing regulations, "[o]n the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the

parents the procedural safeguards notice described in § 300.504." 34 C.F.R. § 300.530(h).

14. The necessary inquiry is set forth in 20 U.S.C. § 1415(k)(1)(E), as follows:

> [redacted] [redacted].
>
> (i) In general. Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—
>
> (I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
>
> (II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

15. If the local educational agency, the parent, and relevant members of the IEP team determine that either subclause (I) or (II) of clause (i) is applicable, the conduct shall be determined a [redacted] of the child's disability. 20 U.S.C. § 1415(k)(1)(E)(ii). If the [redacted] is deemed a [redacted] of the child's disability, the student must be returned to the educational placement from which [redacted] or [redacted] was removed.

20 U.S.C. § 1415(k)(1)(F)(iii). Additionally, if no [redacted] ([redacted]) was in place at the time of the [redacted], the school district is obligated to "conduct a [redacted], and implement a [redacted] for such child." 20 U.S.C. § 1415(k)(1)(F)(i).

16. If the [redacted] that gave rise to the violation of the school code is determined not to be a [redacted] of the child's disability, the school district may apply the relevant [redacted] procedures in the same manner and duration as would be applied to children without disabilities. 34 C.F.R. § 300.530(c). The child, however, must continue to receive education services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. Additionally, the child must receive, as appropriate, a [redacted] ([redacted]), and [redacted] services and modifications, that are designed to address the [redacted] violation so that it does not recur. 34 C.F.R. § 300.530(d)(i) and (ii).

17. In this case, Petitioner's complaint raises no procedural issues with the [redacted] review process and does not contend that the [redacted] in question was a [redacted] of the Student's disability. However, the complaint does contend that the Student was simply not guilty of the misconduct, since

the criminal action was "no filed" against the Student and there was no other evidence of the [redacted].

18. Addressing Petitioner's claim that the team failed to properly consider the merits of the underlying conduct in question, the undersigned rejects this contention. The team's function is not to determine guilt or innocence of the underlying conduct in question, but rather to determine, whether said conduct (as determined by the school's investigation) was a [redacted] of the Student's disability or of Respondent's failure to implement the IEP. Further, the expedited hearing afforded under IDEA is limited to a review of the [redacted] by the team. The hearing does not encompass a review of the merits of the violation of the code of student conduct. See Danny K. v. Dep't of Educ., 2011 U.S. Dist. LEXIS 111066 (D. Haw. 2011)(holding that there is no authority to suggest that a [redacted] team must review the merits of a school's findings as to how a student violated the code of student conduct as such a requirement would essentially [redacted] teams, and in turn, [administrative law judges] as appellate deans of students). See also Fla. Admin. Code R. 6A-6.03312(7)(c). As such, there was no evidence presented at the hearing that demonstrated Petitioner's misconduct was a [redacted] of [redacted] disability and Petitioner, therefore, failed to demonstrate that Respondent's

determination concerning the [redacted] made by the Student during the summer of [redacted] was incorrect.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. The [redacted] decision that Petitioner's conduct during the summer of [redacted] was not [redacted] of the Student's disability was correct and is approved.

2. Respondent may apply the relevant [redacted] procedures in the same manner and duration as would be applied to children without disabilities. The Student, however, must continue to receive education services so as to enable the Student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the Student's IEP.

3. All other requests for relief are denied.

DONE AND ORDERED this 4th day of October, in Tallahassee, Leon County, Florida.

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DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this [redacted] day of October, [redacted].

ENDNOTE

[1/] In general, the purpose of a manifestation review hearing is to review the manifestation decision made by the manifestation determination team. The purpose of the hearing is not to challenge the accuracy of the specific act for which a student is being disciplined. In general, challenges to the specific act for which a student is being disciplined, and whether that act occurred, can only be made in a disciplinary hearing provided for in the school's student code of conduct or Board rules.

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).