

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case No. 22-1294EDM

PALM BEACH COUNTY SCHOOL BOARD,

Respondent.

_____ /

FINAL ORDER

A due process hearing was held by Zoom teleconferencing on May 17, 2022, before Administrative Law Judge Jessica E. Varn, with the Division of Administrative Hearings (DOAH).

APPEARANCES

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

For Respondent: Laura E. Pincus, Esquire
 School Board of Palm Beach County, Florida
 3300 Forest Hill Boulevard, Suite C-331
 West Palm Beach, Florida 33406

STATEMENT OF THE ISSUE

Whether the School Board has appropriately placed the student in an Alternative School.

PRELIMINARY STATEMENT

The request for a due process hearing (Complaint) was filed on April 27, 2022, with the Palm Beach County School Board (School Board). The following day, the School Board filed the Complaint with DOAH, and a Case

Management Order (CMO) was issued on May 2, 2022. Pursuant to the CMO, this case was identified as an expedited disciplinary matter. Subsequently, the parties participated in a resolution session on May 3, 2022, but were unable to reach an agreement.

A telephonic scheduling conference was held with the parties on May 13, 2022, and a Notice of Hearing was issued setting the case for a due process hearing on May 17, 2022. The due process hearing was held via video-teleconferencing to determine the student's appropriate placement. At the hearing, the School Board called three witnesses: the [REDACTED] of Middle School B, the [REDACTED] of the Alternative School, and an [REDACTED] for the School Board. The minor student testified and Petitioner testified on behalf of the student as well. No exhibits were entered into evidence by either party. At the end of the hearing, the Court invited the parties to file proposed orders by May 23, 2022. Due to the expedited nature of this hearing, this Final Order was prepared without a transcript.

The identities of witnesses entered into the record are memorialized in the hearing transcript. Unless otherwise indicated, all rules and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, the undersigned will use male pronouns in this Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. The student in this case is [REDACTED] years old, in middle school, and is eligible for exceptional student education (ESE) under the category of Language Impairment.

2. The student has an extensive history of maladaptive behaviors resulting in disciplinary referrals, including physical aggression, profanity, and non-compliance.

3. The student began middle school at Middle School A, but due to disciplinary issues and a request by the parents, he transferred to Middle School B.

4. When he started to attend Middle School B, the student initially behaved appropriately. However, the student quickly compiled disciplinary referrals on a weekly basis. Also, at this time, the student had a romantic relationship with a female student. The student and his girlfriend frequently skipped class together.

5. When the student's relationship with his girlfriend ended, the student began having issues with the girl's new boyfriend. On at least one occasion, the student and new boyfriend were involved in a physical altercation on school grounds.

6. Due to the parents' request, the student was transferred back to Middle School A.

7. Once again, due to the student's continued disciplinary issues at Middle School A, the student was transferred to Middle School B.

8. The student's maladaptive behaviors continued at Middle School B, ultimately resulting in a major violation of the code of student conduct. A manifestation determination was completed and the school authorities recommended a change in placement for the student, to Alternative School. On March 24, 2022, the student enrolled in Alternative School.

9. [REDACTED] is a "second chance" school with approximately [REDACTED] students. It is divided into three learning communities—the first community is for [REDACTED], the second community is for [REDACTED], and the third community is for [REDACTED]. The student was placed in the [REDACTED] community where the student's Individualized Education Plan (IEP) can be implemented.

10. The [REDACTED] testified that [REDACTED] is one of the safest schools in the district because all students are searched before they enter the school, all students must walk through a metal detector to enter the school, and there is one sole point of entry.

11. The student attended [REDACTED] and completed his first day without issue; but then he did not attend school for two weeks.

12. On the student's second day in attendance at [REDACTED], the student was immediately removed from class due to his refusal to comply with rules, class disruption, and use of profanity.

13. On April 20, 2022, the student and [REDACTED] other boys attempted, multiple times, to gain access into Middle School B via multiple points of entry. The student was holding what appeared to be a metal pipe and was wearing a black ski mask; however, Middle School B's [REDACTED] testified that he recognized the student due to his extensive disciplinary history. The [REDACTED] testified that he did not recognize the other [REDACTED] boys. Even after several staff members ordered the boys to leave the school premises, the boys continued their attempt to gain access onto Middle School B's campus. At one point, the boys hid behind hedges between Middle School B and a private business.

14. According to a rumor, the boys were attempting to access Middle School B in order to fight another student. Eventually, the [REDACTED] boys fled after staff threatened to call the police.

15. At the hearing, the student claimed that he is the victim of bullying at all of the schools he attended.

16. The School Board, during the course of many transfers of schools, presented Petitioner with information as to how to apply for a Hope Scholarship.¹ To date, Petitioner has not applied for a Hope Scholarship.

¹ Pursuant to section 1002.40(6), Florida Statutes, school districts in Florida have an obligation to notify families of the Hope Scholarship Program. The Hope Scholarship is for students in grades kindergarten through twelfth grade who are enrolled in a Florida public school and have been bullied, harassed, assaulted, threatened, and or have been affected by

17. Given the student’s extensive history of maladaptive behaviors, and his failure to comply with school rules, the student’s IEP team has appropriately decided that Alternative School is the correct placement for the student at this point.

18. Petitioner provided no evidence establishing that the placement is inappropriate.

CONCLUSIONS OF LAW

19. 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).

20. Petitioner bears the burden of proof with respect to each of the issues raised herein. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

21. 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 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).

other violent acts. The Hope Scholarship allows the student to transfer to another public school or to enroll in an appropriate private school.

22. 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), and (b)(6).

Disciplinary change in educational placement:

23. 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 10 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 local education authority (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).

24. The necessary inquiry is set forth in 34 C.F.R. § 300.530(e), as follows:

Manifestation determination.

- (1) 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 LEA, the

parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must 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 LEA's failure to implement the IEP.
- (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.
- (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

25. Generally, if the conduct is deemed a manifestation of the child's disability, the student must be returned to the educational placement from which he or she was removed. 34 C.F.R. § 300.530(f)(1). Additionally, if a behavior intervention plan (BIP) was not in place at the time of the misconduct, the school district is obligated to conduct an functional behavior assessment (FBA) and implement a BIP for such child. *Id.*

26. If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the school district may apply the relevant disciplinary procedures in the same manner and duration as would be applied to children without disabilities. 34 C.F.R. § 300.530(c).

27. Petitioner failed to meet his burden of proving that the School Board inappropriately removed the student from his education placement or that the School Board failed to follow the appropriate procedural safeguards for an

educational change in placement. Further, Petitioner failed to present persuasive evidence to demonstrate that he is unable to safely access his education at Alternative School.

28. As relief, Petitioner requested placement in a comprehensive middle school. However, Petitioner failed to provide any persuasive evidence to demonstrate that the IEP team erred in placing the student at Alternative School, or that Alternative School cannot implement the student's IEP. Ultimately, Petitioner failed to meet his burden of showing that placement in a comprehensive middle school would meet his special education needs.

29. In fact, the School Board provided persuasive evidence establishing that Alternative School implements the student's IEP and is the appropriate placement for the student to receive a free and appropriate education at this point in time.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to prove that placement in the Alternative School is inappropriate. Petitioner's Complaint is, therefore, denied in all aspects.

DONE AND ORDERED this 27th day of May, 2022, in Tallahassee, Leon County, Florida.



JESSICA E. VARN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of May, 2022.

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).