STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 23-4047E

GULF COUNTY SCHOOL BOARD,

Respondent.
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FINAL ORDER

A due process hearing was held in this case from January 31 through February 2, 2024, before Administrative Law Judge Nicole D. Saunders of the Division of Administrative Hearings (DOAH), via Zoom conference.

APPEARANCES

For Petitioner: Stephanie Langer, Esquire
Langer Law, P.A.
15715 South Dixie Highway, Suite 205
Palmetto Bay, Florida 33157

For Respondent: Bob L. Harris, Esquire
Messer Caparello, P.A.
2618 Centennial Avenue
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

Whether the School Board failed to identify the student as eligible for exceptional student education services.[1]

[1] The Notice of Hearing by Zoom Conference issued in this case on November 7, 2023, indicates a second issue for determination, specifically whether "[Respondent's alleged] failure [to identify the student as eligible for exceptional student education services] resulted in discrimination based on the student's disability." However, Petitioner's counsel orally

PRELIMINARY STATEMENT

On October 11, 2023, Petitioner filed a request for due process hearing (Complaint) with the School Board (Respondent). Respondent forwarded the Complaint to DOAH on October 17, 2023. On October 18, 2023, a Case Management Order was issued, outlining the deadlines and procedures governing the proceeding. An Amended Case Management Order—amending the due dates in this case—was issued on October 19, 2023. Respondent filed a Response to Request for Due Process Hearing on October 23, 2023; and a Resolution Meeting Status Report (Status Report) four days later. In the Status Report, Respondent indicated that the parties had attended a resolution meeting on October 26, 2023, but had reached an impasse.

A telephonic scheduling conference was held on November 3, 2023. During that conference, the parties agreed to schedule the due process hearing for January 30 through February 2, 2024.

At that point, discovery ensued. On November 3, 2023, Respondent filed its First Set of Interrogatories to Petitioner. It also filed a First Request for Production to Petitioner and a Notice of Taking Deposition via Zoom Videoconference (Notice). In the Notice, Respondent indicated its desire to depose Petitioner and Petitioner's parents. Respondent then filed a Notice of Production from Non-Parties, Notice of Service of Second Set of Interrogatories to Petitioner, and Second Request for Production to Petitioner on November 9, 2023.

On November 20, 2023, Petitioner filed an Objection to Non-Party and Proposed Third Party Subpoenas and Motion to Quash (Motion). An Order to Show Cause was issued on December 4, 2023, directing Respondent to

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withdrew the request for hearing on that issue at the outset of the due process hearing in this case.

demonstrate why the relief requested in the Motion should not be granted. On December 6, 2023, Petitioner filed an Objection and Answers to Interrogatories and a Response to Respondent's Request for Production. That same day, Petitioner filed a Motion for a One Day Extension to File Responses to Discovery Request by Respondent, Motion for a Protective Order to Change the Date and Limit the Scope of the Depositions of Petitioner's Parents and to Prevent the Deposition of Petitioner, and a Motion for a Protective Order and to Quash Third Party Subpoenas and in the Alternative Request for Copies of Records (Motions). Petitioner also requested a hearing on the Motions.

Furthermore, on December 6, 2023, Petitioner filed Objections and Answers to Respondent's interrogatories propounded on November 3 and 9, 2023, respectively. On December 8, 2023, Respondent filed a Response to the Order to Show Cause. Petitioner's request for hearing on the Motions was granted; and on December 11, 2023, a motion hearing was scheduled for December 14, 2023.

At the Motion hearing, Petitioner's Motion to Quash was granted in part, precluding Respondent from deposing Petitioner and accessing Petitioner's father's cellphone records. Thereafter, discovery continued. Respondent served a third and fourth set of interrogatories and filed a notice of intent to depose Petitioner's parents. It also filed a Notice of Taking Videotaped Deposition via Zoom Videoconference on December 22, 2023.

On December 27, 2023, Petitioner filed a Request for Production and an Amended Request for Production. On January 11, 2024, this case was transferred to the undersigned; and on January 16, 2024, Respondent filed

a Motion for Case Management Conference (Case Management Motion). Petitioner filed a Response; and the undersigned denied the Case Management Motion by Order dated January 18, 2024. That same day, Respondent filed an Amended Motion for Case Management Conference (Amended Case Management Motion). Petitioner responded, raising no objection, but opposing any attempt to continue the case.

The undersigned granted Respondent's Amended Case Management Motion and issued a Notice of Telephonic Pre-hearing Conference. On January 19, 2024, the telephonic prehearing conference proceeded as scheduled. At the conference, Respondent's counsel moved to continue the final hearing due to a medical procedure, but indicated that he could proceed on January 31, 2024. Thereafter, the undersigned rescheduled the hearing for January 31 through February 2, 2024, giving the parties the option to request an additional day of hearing, if necessary.

On January 25, 2024, Respondent filed a First Motion in Limine and Motion to Strike, seeking to exclude certain witnesses and documents from the final hearing. On January 26, 2024, the undersigned conducted a hearing on Respondent's motions; ultimately denying both by an Order, issued January 29, 2024.

Then, on January 30, 2024, Respondent filed a Notice of Admissions Deemed Admitted and a Notice of Filing Affidavit of Wendy Chafin. The same day, Petitioner filed a Notice of Supplementing the Record and Request for Respondent's Counsel to Correct the Record and/or Withdraw his False Statements (Request). Petitioner also filed an Objection to Late Filings of Exhibit (Objection) and Witness Lists and a Motion for Leave to Withdraw or Amend the Admissions (Admissions Motion).

On January 31, 2024, at the beginning of the final hearing, the undersigned orally granted Petitioner's Admissions Motion and Request, denied Petitioner's Objection, and allowed the admission of [redacted] affidavit.

The hearing was held as scheduled.[2] At the hearing, Petitioner presented testimony from Petitioner's father, [redacted], [redacted], and [redacted], M. Ed. Additionally, Petitioner's Exhibits 1 through 5; 7, pages 142 through 144; 8, 10 through 12; 15 through 19; 26, 28, pages 237 and 244; 29 through 33; 36 through 39; and 42 were admitted into evidence.

Respondent offered testimony from [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]. At the final hearing, Respondent also offered an affidavit from [redacted].

Furthermore, the undersigned admitted the following exhibits from the Respondent into evidence: Exhibits 1 through 5 and, 17 through 20.

At the end of the day on February 2, 2024, the undersigned ordered the record to remain open until February 9, 2024, at 5:00 p.m., for the filing of affidavits from two of the Respondent's witnesses—[redacted] and Gulf County Superintendent [redacted][3]—both of whom were unavailable during the final hearing in this matter.

[2] All members of the public who were in attendance were muted and their video cameras were turned off.

[3] Respondent submitted Superintendent [redacted] affidavit with Petitioner's consent as he had not been disclosed as a witness in this case.

Additionally, the parties agreed to file proposed final orders 10 days after the Transcript was filed with DOAH. The parties also agreed that the final order deadline would be extended to 10 days after the parties filed proposed final orders. On February 5, 2024, the undersigned issued a written Order, memorializing the decision to allow the record to remain open. On February 8, 2024, Respondent filed the affidavits; and the undersigned closed the final hearing record on February 12, 2024.

On March 29, 2024, Petitioner filed a Request for the Final Hearing Transcript as no transcript had been filed. That same day, the undersigned issued an Order on Transcript, providing the parties the opportunity to submit proposed final orders on or before April 5, 2024, and setting the final order deadline in this case to April 12, 2024. On April 1, 2024, Respondent moved for a prehearing conference to discuss the Order on Transcript (Transcript Motion). The Transcript Motion was denied, and the parties timely submitted proposed final orders, both of which were considered in the preparation of this Final Order. This Final Order was completed without the benefit of a 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 uses male pronouns 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. Petitioner is a smart, quirky [redacted]-year-old kid who has been diagnosed[4] with Autism Spectrum Disorder (ASD)—a condition that reflects a wide

[4] Petitioner's other diagnoses include Dyslexia and Dysgraphia.

range of symptoms and levels of impairment. ASD is characterized by an atypical developmental profile with a pattern of qualitative impairments in social interaction and social communication, and the presence of restricted or repetitive patterns of behavior, interests, or activities, which occur across settings. ASD's characteristics vary in severity from one individual to another.

2. Petitioner spent the majority of his life in Virginia with his family. While in Virginia, Petitioner briefly attended a private community school. Records from that time describe Petitioner as having a short attention span and being "academically hard to access." In November [redacted], when Petitioner was about five-years-old, he underwent an eligibility determination for special education and related services due to delays in his speech development. And, in January [redacted], the [redacted] County School District found Petitioner eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) category of speech and/or language impairment.

3. Later that month, the [redacted] County School District drafted an Individualized Service Plan (ISP) for Petitioner. That ISP described Petitioner as having the facial expressions, speech, and behavior of a "much younger child." The ISP also described deficits in Petitioner's receptive and expressive language skills and noted that Petitioner struggled to learn the give and take of play in a group setting. As to special instruction, the ISP prescribed speech language therapy.

4. Petitioner's mother homeschooled him until September [redacted], the month Petitioner's family moved to Gulf County, Florida, a small area with an intimate school community. Gulf County has two schools—Port St. Joe Elementary School (Elementary School), for students in kindergarten through sixth grade, and Port St. Joe High School (High School), for students in grades seventh through twelfth. At the time the family moved to Gulf

County, Petitioner had already completed [redacted] grade through his home-schooling program.

5. In early September [redacted], Petitioner's mother registered him and his siblings in the Gulf County School District. As part of Respondent's registration process, Petitioner's mother completed several forms: the School Entry Health Exam Form (Health Form); the Health Parental Consent Form (Consent Form); the Registration Form (Registration Form), and the Expulsion/Suspension History Form (Discipline Form).

6. The Health Form consisted of several components. The first part asked parents to indicate, among other things, whether their child had "any . . . specific illness or social/emotional problems." In response to this question, Petitioner's mother marked "Yes" and wrote "Autism Spectrum Disorder."

7. The Consent Form requested similar information, asking parents to indicate whether their child had any "physical" impairments. On that form, Petitioner's mother wrote "ASD."

8. Petitioner's mother also completed the Registration Form. On that form, she wrote that Petitioner had been homeschooled up until September 1, [redacted], and had never been enrolled in school before. Petitioner's mother also wrote that she was interested in retaining him in the [redacted] grade. Moreover, when asked whether her child had a "physical defect, illnesses, or allergies" of which Respondent should be aware, Petitioner's mother again wrote "Autism" as well as "allergic to penicillin."

9. Finally, when filling out the Discipline Form, Petitioner's mother indicated he had no previous disciplinary history.

10. In addition to completing the registration forms, Petitioner's parents also emailed [redacted], the registrar and secretary at the Elementary School, on September 11, [redacted]. That email read the following in pertinent part:

> I'm sending these again, when I sent them earlier they were through i cloud [sp] and this way you will

> have my direct email. [*** and ***] have been homeschooled for the entire duration of their elementary education thus far. [Petitioner] did go to private school for kindergarten but came home the year following. For end of year evaluations, the state of Virginia accepts either the Iowa, California Achievement Test [CAT] or private evaluations. We have used the CAT test, but I will admit-it's really outdated and not as accurate as we'd prefer. *If there is another way to do some sort of assessment, we would be on board with that.*
>
> [Petitioner] is [redacted], will be [redacted] in March-and should be in [redacted] grade, technically. *[He] does have high functioning ASD, dyslexia, and dysgraphia-[he] was privately tutored for [his] dyslexia/dysgraphia and [he's] come a long way. [He] does struggle with attention and learning in general. [He's] very bright but sometimes things have to be presented to [him] differently or it may take a little longer for [him] to catch on.* We're hoping that delaying [him] back a year will give [him] some extra time to get used to being in school and catch up where [he] may struggle. [He] is mostly worried about being lost when finding where [his] classrooms should be. (emphasis added).

11. Attached to the email were the results of the CAT Petitioner had taken on July 22, [redacted]. The testing results indicated that Petitioner achieved a raw score of 261 out of 337; had a grade equivalent of 11.1; and, ranked in the 97th percentile. The test results also stated that the test was taken under untimed conditions. Petitioner's parents submitted no other documents at the time of his enrollment.

12. The record reveals that [redacted] did not forward Petitioner's parents' email to anyone else in the school district, including the guidance counselor. [redacted] also did not ask the parent for any documentation regarding Petitioner's disability. At that time, none of the employees of the

Elementary School inquired into whether Petitioner previously received special education services in a school setting or whether he was receiving any accommodations at home.

13. Before Petitioner's first day at the Elementary School, Petitioner's mother met with [redacted], the school's principal. The record is unclear as to the full content of the conversation; however the undisputed evidence presented at hearing reveals the following facts: first, [redacted] and Petitioner's mother discussed Petitioner's ASD diagnosis; second, Petitioner's mother agreed to place Petitioner in an intensive reading class; third, Petitioner's mother asked to retain him in the [redacted] grade—and Principal Brock agreed; fourth, Petitioner's mother believed his CAT scores were inflated; and fifth, Petitioner's mother did not request an individualized education plan (IEP) or 504 plan at that time.

14. Petitioner started school on September 14, [redacted]. Thirteen days later, he received his first referral. As background, Respondent has a tiered disciplinary system, with five disciplinary levels, ranging from Level 1 to 5, with Level 5 offenses being the most serious. Level 1 offenses include, but are not limited to, profanity, minor bus misconduct, excessive tardiness, and horseplay. The consequences of Level 1 offenses include a student conference, corporal punishment, work detail, lunch detention, afterschool detention, and loss of privileges. Repeated Level 1 offenses yield greater punishments, including an out of school suspension for a fourth offense. Petitioner's first disciplinary incident arose from his use of a folding, tactical knife in the lunchroom. For this offense, Petitioner received a referral, detention, loss of privileges, and one day of in-school suspension. School staff also called Petitioner's father, who came to the school, and apologized. Petitioner was also apologetic, explaining that he had left the knife in his pocket after fishing. Despite the fact that Petitioner had little to no public-school experience and multiple disclosed disabilities, no staff or faculty from the

Elementary School asked for a formal sit-down meeting with Petitioner's parents at that time.

15. Additionally, no one from the Elementary School engaged the multi-tiered system of support (MTSS) Coordinator [redacted] or a guidance counselor in ascertaining if Petitioner required additional support in the school setting. In fact, there are no records of any conversations, either formal or informal, that Respondent's employees had with Petitioner's parents regarding the September 27, [redacted], incident. Staff also did not ask for any records regarding Petitioner's disclosed disabilities or how they may impact him in the school setting.

16. In addition to this initial disciplinary incident, attendance issues also emerged. By January 3, [redacted], Petitioner had missed six days, or 10.34 percent, of school. These absences violated Respondent's Attendance Policy, which allows for three absences every nine weeks. Accordingly, Elementary School Principal [redacted] wrote a letter to Petitioner's parents, expressing her concerns about Petitioner's attendance. Eight days later, Petitioner's mother responded, explaining that Petitioner had chronic health issues and reiterating that this was Petitioner's first time in public school.

17. During this time, the Elementary School staff conducted regular MTSS meetings, regarding the students in the school. Respondent does not compile records of these meetings. However, multiple witnesses from the school district credibly testified that Petitioner never came up during those meetings as a student of concern.

18. On March 3, [redacted], Petitioner received his second referral, for "Horseplay," a Level 1 offense. According to the documents describing the incident, Petitioner shut his computer on another student's hand after completing a test. He closed the laptop with sufficient force to shatter the screen. For this infraction, Petitioner received two separate Level 1 consequences—one day of "silent lunch" and a missed day of recess (loss of privileges). School personnel also called Petitioner's father. However, as the

record reveals, no one from the school set up a formal meeting with Petitioner's parents; employed any response to intervention; or recommended Petitioner undergo any type of evaluation to determine the function of his behavior.

19. Petitioner received his third referral on May 16, [redacted], this time for sharing inappropriate content with another student during class. In the Student Referral narrative, Petitioner's teacher described the incident as follows:

> Typing and sharing inappropriate content online. Student was supposed to be conducting research for end of year project. [He] and another student were using Google [T]ranslate to say *very inappropriate things* and show to one another. The [boys] would exit the tab when I made my rounds to check on their work and were caught through me checking my Go Guardian secure laptop after [walking] around assisting students. (emphasis added).

20. Petitioner's teacher wrote him up for a Level 2 offense under "Inappropriate Use of Electronic Device" and, he received a day-and-a half of in-school suspension, a conference with his teacher, and a call to his dad.

21. Inexplicably, despite Petitioner's documented absences, multiple referrals—resulting in in-school suspensions and loss of privileges—and disclosed diagnoses of ASD, dyslexia, and dysgraphia, none of Respondent's employees requested a formal meeting with Petitioner's parents at that time.

22. In May [redacted], Petitioner completed his [redacted]-grade year and was promoted to the High School. He started school on August 10, [redacted], and, as [redacted] explained in her sworn affidavit, Petitioner began missing classes and assignments immediately. However, there is no indication evidencing that Respondent attempted to evaluate Petitioner at that point.

23. Then, on September 21, [redacted], Petitioner was accused of posting a threat to the Elementary School on a social media platform. That same day,

Respondent's staff advised Petitioner's parents that he could not return to school. Eight days later, the parents asked for Respondent to hold an eligibility meeting to determine if Petitioner qualified for an individualized education plan (IEP) or 504 plan.

24. On October 4, [redacted], Assistant Superintendent of Student Education Services [redacted] emailed Petitioner's father, seeking consent to evaluate Petitioner for special education and related services. Petitioner filed this Complaint a week later, alleging that Respondent failed in its Child Find obligations under the IDEA and Section 504 of the Rehabilitation Act of 1973. He also asserted that Respondent had discriminated against him based on his disability. At no time did Petitioner's parents deny Respondent's evaluation request.

25. Ultimately, as the evidence at hearing demonstrated, after Petitioner's second referral in March of [redacted], Respondent should have suspected Petitioner had a disability and was in need of special education.

26. Accordingly, Respondent violated its Child Find Obligations under the IDEA in March [redacted].

CONCLUSIONS OF LAW

27. 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).

28. 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).

29. 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).

30. 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. 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).

31. Respondent, a local education agency (LEA) under 20 U.S.C. §1401(19)(A), receives federal IDEA funds, and is thus, required to comply with certain provisions of the IDEA. *See* 20 U.S.C. § 1401, *et seq*.

32. 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).

33. 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. As an initial matter, 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.C. v. Muscogee Cnty. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the students right to FAPE, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation

of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007).

34. In the Complaint, Petitioner asserts that Respondent violated its "Child Find" duty under the IDEA and Section 504. This Final Order addresses each of these allegations in turn.

Child Find Claim under the IDEA

35. Under the IDEA, Child Find is a procedural requirement. In this context, Child Find "refers to a school's obligation, under relevant federal law, to identify students with disabilities who require accommodations or special education services proactively rather than waiting around for a child's parents to confront them with evidence of this need." *Culley v. Cumberland Valley Sch. Dist.*, 758 Fed. Appx. 301, 306 (3d Cir. 2018).

36. The IDEA sets forth its Child Find obligation as follows:

> All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

34 C.F.R. § 300.111(a)(1).

37. To fulfill this requirement, Florida has enacted Florida Administrative Code Rule 6A-6.0331. That rule sets forth a school district's responsibilities regarding students suspected of having a disability. Under that rule, school districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures. Additionally, districts must ensure that all students with disabilities

who need ESE services are identified, located, and evaluated, and FAPE is made available to them if it is determined that the student meets the eligibility criteria.

38. If the school district suspects the student is a student with a disability and needs special education and related services, it must seek consent from the parent or guardian to conduct a full and individual initial evaluation. Fla. Admin. Code R. 6A-6.0331(3)(a).

39. The Child Find duty extends to "[c]hildren who are suspected of being a child with a disability ... even though they are advancing from grade to grade." 34 C.F.R. § 300.111(c)(1). Moreover, the Child Find provision of the IDEA imposes on states a requirement that "[a]ll children with disabilities residing in the State, ... regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated." 20 U.S.C. § 1412(a)(3)(A).

40. In *Durbrow v. Cobb County School District*, 887 F.3d 1182, 1184 (11th Cir. 2018), the Eleventh Circuit held that to trigger a Child Find obligation and potential determination of eligibility, a student with a disability must show: (1) that the disability adversely affects the student's academic performance; and (2) "by reason thereof," the student needs special education. *See* 20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(c)(9); *see also Alvin Indep. Sch. Dist. v. Patricia F.*, 503 F.3d 378, 383-84 (5th Cir. 2007).

41. Here, Petitioner's mother disclosed Petitioner's ASD, dyslexia, and dysgraphia diagnoses to at least two of Respondent's staff members. She also indicated Petitioner's ASD diagnosis on at least four registration forms. Furthermore, as [redacted] credibly testified, Petitioner's mother told her about Petitioner's ASD before school began and shared her concerns regarding Petitioner's social maturity. And, as a result of that conversation, Respondent allowed Petitioner to repeat [redacted] grade. As such, it is undisputed that Respondent knew about Petitioner's disabilities.

42. However, at the time of these disclosures, Respondent had virtually no information about how these disabilities impacted Petitioner's academic performance. This is particularly significant given that Petitioner had a very limited academic history. He had never attended public school before. Despite this, Respondent did not request any additional information from Petitioner's parents or anyone else describing how his disclosed disabilities impacted his academics or behavior.

43. At hearing, Respondent heavily relied on the fact that it conducted MTSS meetings, in compliance with rule 6A-6.0331(1), and that Petitioner never came up during those meetings. However, the evidence at hearing demonstrated that the scope of those meetings was limited to students experiencing academic difficulty. Petitioner's challenges were his behavior, not his academics. Moreover, it is undisputed that Respondent repeatedly noted Petitioner's behavior issues—and punished him for them—but failed to investigate whether any of his behavioral challenges stemmed from his disclosed disabilities, particularly ASD, a disability known to impact social communication and behavior.

44. Moreover, Respondent's decision not to seek consent to evaluate Petitioner became unreasonable as Petitioner's behavioral challenges mounted. Petitioner received three disciplinary referrals and in-school suspensions. He also missed school activities. Specifically, Petitioner's second and third referrals revealed difficulties in social communication and appropriate behavior—closing a laptop on another student's hand so hard that it broke the computer's screen and sharing inappropriate online content—behavior potentially indicative of a student struggling to understand social norms.

45. These actions, coupled with Petitioner's disclosed diagnosis of ASD, history of homeschooling, lack of school records, and Respondent's general unfamiliarity with how Petitioner's disabilities impacted his behavior, should

have prompted Respondent to, at minimum, conduct a functional behavioral assessment to determine whether he needed interventions.

46. At hearing, Respondent's witnesses minimized the seriousness of Petitioner's infractions. However, the undisputed evidence shows that Respondent's employees deemed Petitioner's behavior serious enough to warrant in-school suspensions, a silent lunch, missed recess, and repeated calls to his father. At the same time, Respondent documented its concerns surrounding Petitioner's excessive absences.

47. Therefore, the evidence shows that Respondent failed in its Child Find obligations in March [redacted] when Petitioner received his second referral for behavior that demonstrated a lack of social awareness.[5] *Bd. of Educ. of Fayette Cnty., Ky. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007), citing *Clay T. Walton Cnty Sch. Dist.*, 952 F. Supp 817, 823 (M.D. Ga. 1997) (To establish a violation of the child find requirement, plaintiffs "must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.").

48. However, the existence of a procedural violation does not end the inquiry. Instead, a school district may be held liable for procedural violations of the IDEA that cause substantive harm to the student. *Metro. Bd. of Pub. Educ. v. Guest,* 193 F.3d 457, 464 (6th Cir.1999). *Bd. of Educ. of Fayette Cnty., Ky. v. L.M.*, 478 F.3d 307, 313 (6th Cir. 2007).

49. As the record demonstrates, Respondent's failure to evaluate Petitioner after his second referral, resulted in missed classroom instruction, assignments, and recreational time. It also led to Petitioner's third referral—a Level 2 disciplinary infraction for Inappropriate Use of Electronic Device—

[5] The parties discussed, at length, the applicability of section 34 C.F.R. § 300.534(d)(2)(i)-(iii) to this proceeding. However, this section does not apply. In this case, the relevance of the disciplinary referrals is whether they informed Respondent of Petitioner's potential need for special education services, not whether disciplining Petitioner was a violation of 34 C.F.R. § 300.534.

an offense for which he received a day-and-a half of in school suspension, a conference with his teacher, and a call to his dad. These consequences meet the substantive harm requirement. *See L.M.*, 478 F.3d at 313.

Child Find Claim under Section 504

50. Petitioner also asserts that the Respondent violated Section 504's Child Find obligation. The Eleventh Circuit has found that Child Find violations under Section 504 require proof that the school district acted or failed to act with deliberate indifference. *See Liese v. Ind. R. Cnty. Hosp. Dist.*, 701 F.3d 334, 345 (11th Cir. 2012). Deliberate indifference requires "more than gross negligence." *Id.* It requires a deliberate choice. *Id.*

51. Applying these principles here, Petitioner has failed to establish a Child Find violation under Section 504. As Respondent's witnesses credibly testified, the choice not to refer Petitioner stemmed from the belief that his behaviors were unrelated to his ASD diagnosis. While, as explained above, this conclusion did not provide a reasonable basis not to evaluate him under the IDEA, Petitioner failed to establish that Respondent's decision stemmed from deliberate indifference to Petitioner's disability.

52. As such, Petitioner's Section 504 Child Find claim is denied.

Relief

53. Having found that Respondent violated its Child Find duty under the IDEA, the next concern is the appropriate remedy. *See* 20 U.S.C. § 1415(i)(2)(C)(iii). In determining an appropriate remedy, the court or administrative hearing officer has broad discretion. *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 770 (6th Cir. 2001); *see also Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244 n.11 (2009)(observing that 20 U.S.C. § 1415(i)(2)(C)(iii) authorizes courts and hearing officers to award appropriate relief, notwithstanding the provision's silence with regard to hearing officers). *D.C. ex rel. E.B. v. N.Y.C. Dep't of Educ.*, 950 F. Supp. 2d 494, 516 (S.D.N.Y. 2013)(awarding reimbursement for transportation costs); *JP v. Cnty. Sch. Bd.*, 641 F. Supp. 2d 499, 506-07 (E.D. Va. 2009) (awarding parents a

reasonable rate of interest to compensate them for tuition payments made on their credit cards, as well as credit card processing fees).

54. Appropriate relief depends on equitable considerations, so that the ultimate award provides the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Reid v. Dist. of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005).

55. Guided by these principles, the undersigned orders the following relief: within 20 days of this Final Order, Respondent must evaluate Petitioner and within 15 days of the evaluation, Respondent must hold an eligibility meeting to determine what, if any, supports and services Petitioner needs in the school setting and whether he is in need of an IEP or 504 plan. If Petitioner is determined eligible for special education, Respondent must provide Petitioner with compensatory education from March [redacted] until the date of the IEP for any services outlined in that plan. Respondent must also provide training to its employees on its obligations under Child Find under the IDEA.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner established that Respondent violated the IDEA by failing to timely evaluate him for special education and related services, and Respondent is ORDERED to:

1. Within 20 days of this Final Order, evaluate Petitioner and within 15 days of the evaluation, hold an eligibility meeting to determine what, if any, supports and services Petitioner needs in the school setting and whether he is in need of an IEP or 504 plan.

2. If Petitioner is determined eligible for special education, Respondent must provide Petitioner with compensatory education from March [redacted] until the date of the IEP for any services outlined in that plan.

3. Respondent must provide training to its employees on its obligations under Child Find under the IDEA.

4. All other forms of relief are denied.

DONE AND ORDERED this 12th day of April, 2024, in Tallahassee, Leon County, Florida.

NICOLE D. SAUNDERS
Administrative Law Judge
DOAH Tallahassee Office

Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32301-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of April, 2024.

COPIES FURNISHED:

Amanda W. Gay, Esquire
(eServed)

Bryce D. Milton, Educational Program Director
(eServed)

Stephanie Langer, Esquire
(eServed)

Bob L. Harris, Esquire
(eServed)

Andrew B. King, General Counsel
(eServed)

James P. Norton, Superintendent
(eServed)

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).