STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**,

Petitioner,

vs.

Case No. 24-3233E

MIAMI-DADE COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

The due process hearing was held, by agreement of the parties, via Zoom conference on January 8 and 9, 2025. Jessica E. Varn, an administrative law judge with the Division of Administrative Hearings (DOAH), presided over the hearing.

APPEARANCES

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

For Respondent: Gabrielle L. Gonzalez, Esquire
School Board of Miami-Dade County, Florida
1450 Northeast Second Avenue, Suite 430
Miami, Florida 33132

STATEMENT OF THE ISSUES

(1) Whether the School Board's proposed placement for Petitioner is the least restrictive environment (LRE) within the meaning of the Individuals with Disabilities Education Act (IDEA);[1]

[1] Based on the stay-put injunction provided by the IDEA, during the pendency of this case, the student has remained in the last agreed upon placement.

(2) Whether the parents were denied meaningful participation;

(3) Whether Petitioner's individualized education plan (IEP), dated August 23, 2024, is designed to provide a free and appropriate public education (FAPE); and,

(4) What remedies, if any, are appropriate?

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on August 29, 2024. The School Board promptly forwarded the Complaint to DOAH, and Judge N. Saunders was assigned to the case.

On September 16, 2024, Attorney Stephanie Langer filed a Notice of Appearance, indicating that she represented Petitioner. A telephonic pre-hearing conference was held by Judge Saunders on October 4, 2024. Later that day, Judge Saunders issued a Notice of Hearing by Zoom Conference, memorializing the mutually agreed upon hearing dates, as well as the specific issues raised in the Complaint.

On November 8, 2024, after some Discovery was propounded by Attorney Langer, she moved to withdraw as counsel, citing irreconcilable differences. Judge Saunders granted the Motion to Withdraw.

On January 2, 2025, this case was transferred to the undersigned, and the hearing was held as scheduled. Petitioner Exhibits A through Z, AA, and BB, were admitted into evidence. School Board Exhibits 1 and 12 were admitted, and School Board Exhibit 9 was admitted as a Joint Exhibit. The student's mother testified; as well as [redacted], exceptional student education (ESE) teacher; [redacted], Assistant Principal; [redacted], ESE

District Director; [redacted], ESE teacher; and [redacted], Principal.

At the end of the due process hearing, the parties agreed to file proposed final orders 21 days after the Transcript was filed with DOAH. The parties also agreed to extend the final order deadline to ten days after the proposed final orders were filed. The Transcript was filed on February 18, 2025. Accordingly, the deadline for the proposed final orders was March 11, 2025, and the final order was due on March 21, 2025. On March 5, 2025, the parties agreed to extend the final order deadline to March 28, 2025.

The School Board filed a proposed final order, which was considered in preparing this Final Order. All of the witnesses' testimony was considered and all exhibits were reviewed, although they may not be referred to in the Findings of Fact below.

Unless otherwise indicated, all rule and statutory references are to the versions in effect during the relevant period. For stylistic convenience, the undersigned uses male pronouns when referring to the student. The male pronouns are neither intended, nor should be interpreted, as a reference to the student's actual gender.

FINDINGS OF FACT

1. The student is a [redacted] grader at [redacted] School, where he has been a student since [redacted]. He is eligible for ESE services under the categories of Specific Learning Disability (SLD); Language Impaired, and Speech Impaired. He is also diagnosed as having attention deficit hyperactivity disorder (ADHD).

2. He repeated Kindergarten, showing an early tendency of struggling with many aspects of school life. Outside of school, starting as early as

Kindergarten, the student was receiving tutoring help weekly. The tutor, his ESE teacher at the time, was paid by the parents. This tutoring started at two hours weekly, and eventually, by [redacted] grade, was increased to four hours a week.

3. From Kindergarten through [redacted] grade, the student's IEP teams determined that, based on his needs, he spent much of his day in what the IEPs referred to as a resource room; that is, an ESE classroom. His placement on the LRE continuum was the ESE classroom. It was his homeroom, his cohort of students were all ESE students, and he received specialized instruction in reading, math, and language arts on a standard curriculum in that ESE classroom.

4. In February [redacted], while the student was in [redacted] grade, his I-Ready scores reflected that as to phonics, vocabulary, and reading comprehension, the student scored at a first-grade level.

5. In February and March [redacted], a re-evaluation of the student was conducted, to address his growing needs. The school psychologist assessed his intellectual abilities, academic skills, and social and emotional functioning. She concluded:

> [**] is diagnosed with ADHD and takes medication. [His] teachers reported that [he] is easily distracted and can be hyperactive when [he] is not on [his] medication. [His] teacher also reported that [he] needs frequent redirection and repetition.
> . . .
>
> Notably, [he] often required repetition to grasp verbally based subtests and questions. [**] earned a Composite Intelligence Index (CIX) of 58 which falls in the extremely low range with extremely low verbal abilities and borderline nonverbal abilities. Academically, [**] displayed average word decoding skills and low average math calculation skills. [He] displayed well below average reading comprehension and math problem solving skills. It appears that [**] does well with concrete skills such

> as word decoding and basic math calculation but struggles with more abstract concepts and application.
>
> According to teacher and parent ratings on the social and emotional rating scale, [**] displays difficulties with attention, learning, leadership, and functional communication skills.

6. At the end of [redacted] grade, on April 29, [redacted], the IEP team met for an annual review, and once again determined that, based on his needs, and the recent evaluations, his placement would continue in the ESE classroom. This IEP team consisted of the student's mother, the Assistant Principal, the student's general education teacher, the student's ESE teacher, and an Evaluation Specialist, who had been part of the IEP team in past years.

7. At this point, the IEP team knew that in addition to the full day of school, the student needed tutoring to address his academic challenges; at a rate of six days a week, with only Sundays free of academic work. Even with the tutoring, and the ESE classroom placement, the student was falling more and more behind his peers, earning Ds and Fs in the core subjects.

8. The April IEP team noted that while the student can read fluently, he has significant challenges in comprehending what he is reading, and with grade level math operations. In the domain of social or emotional behavior, the IEP stated that his participation in the general education curriculum is impacted because he "struggles to stay focused and on task without redirection. [He] would benefit from individualized support to increase on-task behavioral skills." The IEP team also noted that the student requires adult close proximity and continuous redirection for all learning activities and task completion.

9. In the section titled "LRE Considerations," the student was, as in years past, going to spend 50% of his day with general education peers in science, social studies, other special areas, and physical education. The other 50% of

his time would be spent in the "resource room" for reading, math and language arts.

10. At the end of [redacted] grade, after the annual IEP meeting, the student's scores from the standardized Florida Assessment of Student Thinking (FAST) test, which students must pass to advance to fourth grade, were issued. In reading, he scored a 191 out of 260 — a level 2 out of 5. The cut-off between a Level 1 and 2 is 186. The explanation of Level 2 is:

> Below Grade Level. Students who score in Level 2 demonstrate below grade level skills but are not yet demonstrating On Grade Level success with the challenging B.E.S.T. Standards. To be prepared for the next grade, they are likely to need substantial support.

11. On the mathematics FAST test, he scored a 180 out of 260 — a Level 1 out of 5. The cut-off between a Level 1 and 2 is 183. The explanation of Level 1 is:

> Well Below Grade Level. Students who score in Level 1 demonstrate well below grade level skills but are not yet demonstrating On Grade Level success with the challenging B.E.S.T. Standards. To be prepared for the next grade, they are likely to need substantial support.

12. A school-based social worker also re-evaluated the student, in early April [redacted], but [redacted] report was not issued until after the annual IEP meeting. The social worker evaluated the student using the Vineland-3 Comprehensive Interview Form. [redacted] reported that the student's overall level of adaptive functioning was well below the normative mean of 100, with a score of 79. The percentile rank for his overall score was 8.

13. Over the summer between [redacted] and [redacted] grade, the parents paid for summer tutoring. The IEP team was aware of this, too; as the student's tutor was one of the ESE teachers at the school. Despite the parents investing

thousands of dollars in after-school, weekend, and summer tutoring, the parents are not seeking reimbursement for all of their out-of-pocket costs.

14. According to the student's mother, when she arrived to bring school supplies for the upcoming [redacted] grade year, on August 14, [redacted], she was told by the Principal that, based on a meeting held with the [redacted] school staff over the summer, the ESE classroom (also referred to as a resource room, depending on each student's amount of time spent there) for grades [redacted] and [redacted] was not being staffed with a teacher, and so the student's placement would be changed to general education with support facilitation.[2]

15. Understandably stunned and confused, the student's mother began to contact anyone she could find to inquire as to why her [redacted] placement was suddenly changed without an IEP meeting.

16. The IEP team met on August 23, [redacted], a few weeks into [redacted] grade. This IEP team had expanded. The team now consisted of 14 members, including three district level ESE administrators. One of those new members, [redacted], testified at the hearing.

17. When [redacted] was asked why the IEP team had to meet in August [redacted], after creating an IEP at the end of [redacted] grade, [redacted] replied,

> So that would be a question certainly for the LEA at the school site. I'm not certain as to what led to their decision to reconvene. I would say, if I were to speculate, that schedules are developed at the beginning of the school year and due to the fact that they had a unique circumstance in which we had a teacher who has special education certification that was teaching that course, and we had the additional benefit of bringing another special education teacher into the environment, perhaps the team felt that after this scheduling arrangement was made, that this would be beneficial for the student in light of that. Perhaps that could be why.

[2] When the Principal testified, she did not remember this conversation, and denied saying this. The parent's recollection is found to be more consistent with the record as a whole; and therefore, more persuasive.

> Because frequently in our buildings, we develop schedules which look great on paper, and then we get to August, and then things change with regards to enrollment and teachers and where they go. So this is a very ideal classroom environment to have when we do, and we are able to use our dually certified teachers in that way and also still use an ESE teacher as an additional add-on. So I can imagine, but I would defer to, of course, the school team LEA to speak more to that.

18. This "very ideal classroom environment" was a general education [redacted] grade classroom, taught by an ESE-certified teacher. Support facilitation would also be provided, utilizing push-in specialized instruction by an additional ESE teacher. The school-based team, now fortified with district level members, determined that the student, whose needs had not changed from May to August (all the data/descriptions of the student's skills and deficiencies on the April IEP remained unchanged in the August IEP), should now spend his entire day in a general education classroom.

19. During the August IEP meeting, the student's mother objected to this support facilitation model, pointing out that in [redacted] grade, he had barely passed the FAST reading test and failed the math portion. This was after being in a resource room for all math, reading, and language arts since [redacted] and with six days a week of parent-provided one-on-one tutoring. She also emphasized his challenges with attention and remaining on task for any learning tasks—which was always reflected in his IEPs —- she understandably wondered how he could focus on academic work in a classroom with many more children.

20. Ultimately, to address the mother's concerns, the IEP was drafted with this language on placement:

> The team is purposing **as a result of the re-evaluation**, a more inclusive model of specialized instruction consisting of 60 minutes daily of reading, 15 minutes daily language arts, 45 minutes daily for math, and 30 minutes twice a week for science. [Ms.

> *], [**]'s mother did not agree with support facilitation model. The team proposed reviewing this model of support within 9 weeks and reconvene to see [his] progress. [Ms. *] was still in disagreement with the IEP and was emailed the Due Process and Mediation documents.

(emphasis added)

21. The record as a whole establishes that the student's placement was not changed because his needs changed, or, as stated in the IEP, based on a re-evaluation—the student's placement was changed based solely on staffing changes. The school added support facilitation for their [redacted] and [redacted] graders, and added an ESE certified teacher for the [redacted]-grade general education class. They claim that specialized instruction in math, reading and language arts in a resource room is the same, and even inferior to, a push-in support facilitation model in a general education class.

22. The record as a whole, though, does not reflect that this recommended change in placement in August [redacted] was based on any key change in the student's needs—every school-based witness explained that when school started in August, staffing and scheduling is what changed their view of which placement was appropriate for the student.

23. Oddly, the Principal and the teachers who work directly with the student all testified that they believed that the student could access his education in the 50/50 model of general education and resource room and speculated that he could succeed in a general education classroom with support facilitation. At the hearing, they had no objection at all to the student remaining in the exact placement he had been in since [redacted]. This, of course, confused the student's mother during the hearing—as much time and effort was spent trying to persuade the school-based IEP team members to implement the April IEP.

24. Because the change in placement from a 50/50 split between resource room and general education to 100% inclusion with support facilitation was

not based on the student's needs, or on any student data that changed over the summer months, the student's placement in the August IEP is not appropriate, and is a violation of the LRE directive.

CONCLUSIONS OF LAW

25. DOAH has jurisdiction over the parties and the subject matter of this proceeding under sections 1003.57(1)(b) 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 claim by a preponderance of the evidence. *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).

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 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).

29. 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*.

30. 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).

31. In the Complaint, Petitioner asserts that the School Board failed to provide him with an appropriate placement in the LRE. Put differently, Petitioner argues that the recommended placement in the August [redacted] IEP cannot meet his needs. Petitioner proved this claim.

32. 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.

33. 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 R. 6A-6.03028(3)(i) and 6A-6.0311(1).

34. 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).

35. 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) (emphasis added).

36. 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.

37. 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.*

38. 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.

39. Applying these principles here, Petitioner presented persuasive evidence that the School Board failed to provide him an appropriate placement in the August IEP; thereby failing to comply with the IDEA. It is undisputed that the School Board offered Petitioner placement in a separate classroom for math, reading, and language arts for grades Kindergarten through [redacted] grade and found it necessary to maintain that placement in the April [redacted] IEP. At the beginning of the next school year, with no change in the student's needs or key data, the school-based members of the IEP team concluded that, based on a staffing decision, the student's placement would change to 100% of his school day spent in a general education class. They reached this conclusion despite there being no change in his disabilities or unique needs. As a result, the change in placement was not tailored to meet his special needs.

40. Lastly, Petitioner also raised the issue of whether the parent was denied meaningful participation during the August IEP. 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.C. v. Muscogee Cnty. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, the school board only denies a student FAPE where the 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).

41. Congress has established procedural safeguards to ensure that parents have meaningful input into all decisions impacting their child's education. *See Honig v. Doe*, 484 U.S. 305, 312 (1988). 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 Cnty. Sch. Bd.*, 757 F.3d 1173 (11th Cir. 2014).

42. 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." 757 F.3d 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." 757 F.3d 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").

43. However, "'[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 pre-formed opinions on what is appropriate for a child's education so long as such opinions do not "obstruct the parents' participation in the planning process." *R.L.*, 757 F.3d at 1188.

44. 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.* at 57. The inquiry into whether predetermination occurred is inherently fact intensive, but should identify those cases in which parental participation is meaningful and those cases in which it is a mere formality. *R.L.*, 757 F.3d at 1189.

45. Here, Petitioner argues that the School Board denied the mother's right to meaningfully participate in the August [redacted] IEP by recommending a change in placement without considering her [redacted] unique needs.

46. This claim fails. By all accounts, the student's mother fiercely and lovingly advocated for her [redacted] and his educational needs, participating in his education. Furthermore, while the mother ultimately, and rightfully so, disagreed with the recommended change in placement; such disagreement does not mean the School Board violated her right to meaningfully participate. In fact, the IEP reflects that the team was willing to offer a nine-week trial of the support facilitation model and to reassess the student's placement at that point. Thus, Petitioner failed to establish this claim.

47. Although the School Board failed to comply with the IDEA, no compensatory education is due, because the student has been educated in the last agreed upon placement during the pendency of this case, and the parents are not seeking reimbursement for all of the one-on-one private tutoring they have been providing for years.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner has established that the School Board violated the LRE directive. The School Board is ORDERED to place the student in the last agreed upon placement, the placement set forth in the April [redacted] IEP. No compensatory education is due.

DONE AND ORDERED this 27th day of March, 2025, in Tallahassee, Leon County, Florida.

JESSICA E. VARN
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
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this 27th day of March, 2025.

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).