

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

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Petitioner,

Case No. 25-0937E

vs.

DUVAL COUNTY SCHOOL BOARD,

Respondent.

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**FINAL ORDER**

On April 30 and May 1, 2025, this cause came before Administrative Law Judge (ALJ) Nicole D. Saunders of the Division of Administrative Hearings (DOAH) for a final hearing held live in Jacksonville, Florida.

**APPEARANCES**

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

For Respondent:    Kelly Hebden Papa, Esquire  
                            Rebekah Gleason Hope, Esquire  
                            Office of General Counsel  
                            117 West Duval Street, Suite 480  
                            Jacksonville, Florida 32202

**STATEMENT OF THE ISSUES**

Whether the School Board denied Petitioner's parent the opportunity to meaningfully participate in the February 5, 2025, individualized education plan (IEP) meeting;

Whether the School Board's recommended placement for Petitioner is appropriate; and

What remedies, if any, are appropriate.

### PRELIMINARY STATEMENT

On February 13, 2025, Petitioner's parent filed a request for a due process hearing (Complaint)<sup>1</sup> with the School Board, which the School Board forwarded to DOAH on February 19, 2025. On February 21, 2025, the undersigned issued a Case Management Order, detailing the deadlines and procedures governing the case.

On February 24, 2025, the School Board moved to extend the resolution timeline. The undersigned granted the extension, thus extending the final order deadline to May 12, 2025. Later that day, the School Board responded to the Complaint. Then, on March 5, 2025, the School Board filed a Status Report, stating that the parties had not resolved the issues in the Complaint, and requesting to set the case for a final hearing.

The next day, the undersigned issued a Notice, setting a telephonic scheduling conference for March 20, 2025. During that conference, the parties agreed to set this matter for a live hearing on April 30 and May 1, 2025. The undersigned then issued a Notice of Hearing on March 21, 2025. On April 21, 2025, an Amended Notice of Hearing was issued, updating the location for the final hearing.

The hearing proceeded as scheduled. Petitioner's parent called Petitioner; [REDACTED], Exceptional Student Education (ESE) Supervisor; [REDACTED], School Counselor; [REDACTED], the School Board's Region

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<sup>1</sup> Although the parent requested an expedited hearing, the Complaint did not raise any issues relating to a manifestation determination or a decision not made by an ALJ regarding a discipline-related change in placement. *See* Fla. Admin. Code R. 6A-6.03312(7)(a). Thus, the Complaint proceeded based on the standard timelines enumerated in Florida Administrative Code Rule 6A-6.03311.

Superintendent; and [REDACTED], Principal of [REDACTED] Elementary School ([REDACTED]). Petitioner's parent also offered narrative testimony. The undersigned admitted Petitioner's Exhibits 1, 3.1, 3.2, and 3.3. For its part, the School Board called [REDACTED] and [REDACTED], two varying exceptionalities teachers; [REDACTED], Assistant Principal at [REDACTED]; [REDACTED], Board Certified Behavior Analyst (BCBA); [REDACTED], School Psychologist; [REDACTED], School Counselor; and [REDACTED] and [REDACTED], two general education teachers. The undersigned admitted School Board Exhibits 1 through 8; 10; 10A through 13; 15; 16; 18, pages 1 through 68, 83, and 103 through 233; and 19 through 25.

At the close of evidence, the parties agreed to submit proposed final orders by no later than May 6, 2025, and this Final Order is due on May 12, 2025. The parties both filed Proposed Final Orders on May 6, 2025, which the undersigned considered in drafting this Final Order. The Transcript was filed on May 8, 2025.

Unless otherwise indicated, rule and statutory references are to the versions in effect when Petitioner filed the Complaint. For stylistic convenience, this Final Order uses female pronouns when referring to Petitioner. These pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

### FINDINGS OF FACT

1. Petitioner is an intelligent, [REDACTED]-year-old student who enjoys music, basketball, and spending time with her friends. She is a [REDACTED] grader at [REDACTED] Elementary School; and accesses her education in a general education classroom.

2. She was found eligible for ESE services in May [REDACTED] under the category of Emotional/Behavioral Disability (EBD). She is currently eligible under the

categories EBD and Other Health Impairment (OHI). Petitioner is capable of academic success when her behavior is well-managed. That said, her behavioral challenges—which include defiance, physical aggression, elopement, and property destruction—negatively impact her academics. She struggles to focus, complete classwork, and follow directions. Her maladaptive behaviors often occur during Math, Reading, Science, and standardized testing. Furthermore, her attention-seeking behaviors and lack of work completion affect her classmates' academic progress.

3. As her disciplinary records show, Petitioner has engaged in aggression against staff and her fellow students. By halfway through her [REDACTED]-grade year, she had been suspended for several days.

4. Between October [REDACTED] and April [REDACTED], to help manage her maladaptive behaviors, Petitioner's multidisciplinary team conducted a functional behavioral assessment (FBA) and drafted a positive behavior intervention plan (BIP). The BIP identified the antecedents, consequences, and functions of the Petitioner's behaviors and laid out various interventions. The BIP also included replacement behaviors, such as requesting a break, and identified a plan for fidelity checks.

5. Then, in May [REDACTED], Petitioner's IEP team—including her parent, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]—met to discuss her educational needs and draft her initial IEP. As the IEP notes explain, while Petitioner was working on grade level, her behavior affected her progress in the general education curriculum:

As a result of [her] disability, [Petitioner] exhibits aggressive behaviors and will elope from designated areas without permission. When [Petitioner] does not get [her] way or is denied access to an activity/item [she] will get up and leave the classroom as well as other areas of the campus. [She] gets extremely frustrated and will yell at student[s] and staff, hit other students, throw classroom

materials, and destroy school property. In addition, when staff is observing [her] and making sure [she] does not leave school grounds[,] [Petitioner] will yell, push staff members, and elope from the school building. After significant interventions, FBA, and staff support[,] there have been minimal changes overall in [Petitioner's] behavior and we have not seen positive responses to [her] de[e]scalation strategies with staff and student interactions. [Petitioner] would benefit from social skills training, sensory/cognitive distraction activities, and self-regulating [her] emotions.

6. Thus, the team drafted an IEP that focused on developing Petitioner's social skills and ability to follow rules. It also called for quarterly progress reporting. The team further prescribed special instruction in social skills and self-management/anger control; and accommodations of providing choices, supervising for transitions, administering tests in a small group, providing extended time for assignments and tests, encouragement, frequent breaks, and proximity control.

7. As the IEP notes show, when the May [REDACTED] IEP meeting occurred, Petitioner's parent knew about her child's behavioral issues. Petitioner had received many referrals, and staff constantly contacted Petitioner's parent when she engaged in disruptive behaviors. Her parent also participated in the creation of Petitioner's Individual Student Safety Plan and Crisis Response Plan.

8. When her [REDACTED]-grade year began, Petitioner's behavioral challenges mounted. She had over a dozen disciplinary incidents over a two-month period. The incidents stemmed from Petitioner's volatile behaviors, such as yelling, slamming doors, and eloping from school. She would also disrupt other students' learning by yelling during tests or snatching classwork materials from them. At times, these outbursts required her teachers to postpone class-wide tests for days at a time.

9. At other times, Petitioner's behavior was even more disruptive. She would hit, push, or choke school staff as well as her classmates. One particularly violent incident between Petitioner and her parent led to a school-wide lockdown and Petitioner's involuntary commitment. Throughout this time, the School Board faithfully implemented Petitioner's BIP and IEP.

10. When Petitioner's challenges continued, her IEP team—now expanded to include [REDACTED]; [REDACTED]; BCBA Hogan; and Applied Behavior Analysis (ABA) Therapist [REDACTED]—convened again on October 14 and 15, [REDACTED]. At the meeting, the team discussed Petitioner's lack of progress, recent assessments, classroom grades, and work completion. Ultimately, to address Petitioner's academic issues, a decision was made to assign two teachers—[REDACTED] and [REDACTED]—to provide support facilitation in Reading and Math, respectively.

11. Petitioner first accepted the support, but in November [REDACTED], abruptly refused to work with [REDACTED]. At that time, Petitioner did not disclose why she rejected her help. Instead, she would simply refuse her assistance and loudly insult her whenever she entered Petitioner's classroom. During one incident, Petitioner threatened that her parent would bring a gun to the school.

12. During this time, the School Board kept collecting data on the frequency and intensity of Petitioner's maladaptive behaviors. The school-based members of the IEP team tried to convene a meeting in November [REDACTED] to discuss her behavior, reevaluation, and appropriate placement. But, at Petitioner's parent's request, the meeting was rescheduled for February 5, [REDACTED].

13. Then, on January 7, [REDACTED], the School Board revised the FBA to include additional areas of concern, including verbal aggression, leaving the assigned area, and making threats. It also updated the BIP to address the increase in duration and intensity of Petitioner's maladaptive behaviors, such as when Petitioner walked around her classroom for 30 minutes refusing to work,

disrupting other students, yelling in class, using profane language, and invading other students' spaces. The new BIP also expanded the use of interventions. Finally, the revised BIP called for daily progress monitoring.

14. On January 31, [REDACTED], school staff issued a meeting notice, which explained the purpose of the meeting: to discuss appropriate placement, request consent to reevaluate Petitioner, and to review and update her IEP.

15. By the February 5, [REDACTED], IEP meeting, the team had gathered significant data as to Petitioner's continued—and increased—behavioral issues. Petitioner had also been suspended for seven days. At the meeting, BCBA Hogan reviewed behavioral data collected over 45 days from December 5, [REDACTED], through January 27, [REDACTED], which revealed elevated levels of off-task behaviors, physical aggression, elopement, and verbal aggression. At that point, Petitioner's behavior was significantly disrupting the learning environment at her school and her classmates feared her. As [REDACTED] explained, "[a]ll the time, when things happen with [Petitioner] I've got this whole class of students crying, running, trying to get in the closet, get in [a] hiding position, trying to call home." Thus, her classmates were missing critical instructional time.

16. In addition to behavior, Petitioner was also experiencing academic challenges. She was failing Math and refused to work in Reading. She also continued to refuse to work with [REDACTED].

17. During the IEP meeting, Petitioner's team found her eligible for ESE services under a secondary disability—OHI; and added Math, Social/Emotional, Reading, and Independent Functioning goals.

18. When the team updated Petitioner's IEP, it prescribed special instruction in social skills, self-management and anger control, and transition. The IEP also called for small group instruction, specialized door-to-door transportation with a bus aide for safety, and training for school staff in classroom/behavior and professional crisis management.

19. And, finding that Petitioner's current placement could not provide the services she required, the school-based members of the IEP team recommended she begin [REDACTED] grade in a separate behavior support classroom. It provided Petitioner's parent several options for behavioral programs.

20. The school-based members of the IEP team summarized the proposed placement recommendation this way:

Progress monitoring data has identified a necessity for more intensive and continued assistance and intervention in social skills, and behavior intervention. In light of [Petitioner's] unique circumstances, provision of a Free Appropriate Public Education (FAPE), and considering the safety of the student, the Multidisciplinary Team (MDT)/IEM Team developed an IEP which includes specialized services beyond those which can be provided in the general education environment yet meet [Petitioner's] current needs.

[\*\*\*]

Providing support and services in the [general education] classroom through support facilitation, resource pullout, and additional adult assistance (1:1) was considered as was the safety of and previous impact on other students in the [general education] classroom. Fidelity of implementation of the student's IEP was monitored and supported by the district support team . . . Additionally, a functional behavioral assessment/Behavior intervention plan (FBA/BIP) was implemented with fidelity, in addition to consultative support from district level Instructional Program Support and [a BCBA].

[\*\*\*]

The progress monitoring data indicates lack of student progress with the previous options considered. The MRT/IEP Team agrees that provid[ing] intensive supports and services in the Behavior Support Classroom [BSC] will provide



consistent support, focusing on effective behavioral and social emotional strategies throughout the day. Additionally, increased supervision and lower student-to-staff ratio will further support the student's unique learning needs while providing access to FAPE.

21. While Petitioner's mother agreed with all of the IEP services, including those that could not be implemented in a general education setting, she disagreed with the proposed placement; and the School Board issued her a prior written notice.

22. Then, on February 27, [REDACTED], the School Board convened a manifestation determination review (MDR) to determine whether Petitioner's conduct between September [REDACTED] and February 11, [REDACTED], were manifestations of her disabilities. The team found that they were.<sup>2</sup> After the MDR, Petitioner remained at [REDACTED].

23. As the evidence shows, after spring break, Petitioner's behavior improved significantly. This is likely due in part to BCBA Hogan's frequent presence on campus and consistent assistance to Petitioner.

24. Yet, this upward behavior trajectory abruptly halted in April [REDACTED] when Petitioner engaged in a violent and extended episode. As BCBA Hogan explained, the incident began over access to a classroom laptop. Within minutes, Petitioner's behavior escalated to violence. As BCBA Hogan testified:

[Petitioner] pushed me...[she] approached my belongings that w[ere] sitting up against the wall, and [she] kicked my book bag. [REDACTED] gave [her] a reprimand. [She] said something along the lines of, you know, you don't kick other people's belongings. [Petitioner] -- and I was still standing near the cabinets, and so [she] then grabbed my book bag.

[\*\*\*]

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<sup>2</sup> Whether the School Board was required to conduct a MDR is not an issue in this case.

[Petitioner] began pushing [her] body up against [REDACTED], trying to either get outside to elope or tried to get to my belongings and dump the rest of them out. And so during that time, [REDACTED] was trying to redirect [Petitioner] asking [her] to come with her, asking [her] if [she] needed to speak with anybody, a preferred adult, offer [her] opportunities to go for a walk, at which point, [Petitioner] did not respond to any of the choices that [REDACTED] was providing.

[\*\*\*]

And from then, [Petitioner] began to continue to push me. [She] then grabbed -- because my back was facing [her] the entire time, so [she] grabbed my shirt and was pulling my shirt to the point where it ripped.

[\*\*\*]

At one point I had my cell phone in the back of -- in my back pocket. [Petitioner] took my cell phone and exited the classroom and then exited out of the building with my phone in [her] hand....[Petitioner] reentered the building in the hallway and threw my phone on the ground and then went back outside.

25. As BCBA Hogan explained, during the incident, Petitioner tried to hit her with a broom; and then tried to enter another classroom before the school resource officer responded. In addition to being physically harmful, Petitioner's behaviors also continue to impact her academics. She has D's in Social Studies and Math and an F in Reading. As [REDACTED] credibly testified, these low grades stem from her refusal to complete school work. As a result, Petitioner is not currently meeting her IEP goals.

26. Based on the evidence presented at the hearing, Petitioner's parent failed to prove the School Board denied her meaningful participation on February 5, [REDACTED], or that the proposed placement of a behavioral classroom is inappropriate.

## 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 Individuals with Disabilities Education Act (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. *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).

31. The School Board, a local education 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.

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. 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).

34. Here, Petitioner's parent raises one procedural and one substantive claim. First, as to her procedural claim, she argues that the School Board denied her the opportunity to meaningfully participate in the February 5, [REDACTED], IEP meeting.

35. As a threshold matter, 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 County School Board*, 757 F.3d 1173 (11th Cir. 2014). In that case, the Eleventh Circuit held that "Predetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team." 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”).

36. But “‘predetermination 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 IEP team members may have preformed 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.

37. 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. *Id.* at 1189.

38. Applying these principles here, Petitioner’s claim fails. As the evidence shows, by the February 5, [REDACTED], IEP meeting, Petitioner’s parent was aware of her behavioral challenges and agreed to the services in Petitioner’s IEP. Indeed, at the final hearing, Petitioner’s parent testified that she agreed that a behavioral program would be appropriate. But she disagreed with the school site. This is not an IDEA issue. *See Rachel H. v. Dep’t of Educ. Haw.*, 868 R.3d 1085, 1092 (2017). Additionally, as the evidence shows, contrary to Petitioner’s parent’s assertion, the school-based members of the IEP team provided her with several options of behavioral programs across various schools. Instead, Petitioner’s parent’s claim stems from her disagreement

with the particular school that the school-based IEP team members recommended. As such, this claim fails.

39. Second, Petitioner’s parent raises a substantive claim—that the proposed placement is inappropriate. She asserts that the proposed placement violates the IDEA’s least restrictive environment (LRE) mandate.

40. That mandate provides:

Least restrictive environment.

(A) 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.

20 U.S.C. § 1412(a)(5)(A).

41. 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).

42. In *Daniel*, the Fifth Circuit set forth a two-part test for determining compliance with the mainstreaming requirement: first, whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. *See* 20 U.S.C. § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the

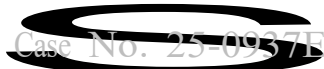
child from regular education, the second issue is whether the school has mainstreamed the child to the fullest extent appropriate. *Daniel*, 874 F.2d at 1048. The Eleventh Circuit has adopted the *Daniel* two-part inquiry. *See Greer*, 950 F.2d at 697. In determining the first step, whether a school 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.

43. Here, Petitioner asserts that the School Board's proposed placement is inappropriate. However, she produced no credible evidence to support this claim. Instead, the evidence shows that Petitioner has experienced intense and disruptive behavioral challenges for at least two years. Her behavior has disrupted the school environment and caused harm to herself, her classmates, and service providers. These behaviors stem from her diagnosed disabilities and require special services and care. These services are also unavailable in the general education setting. Moreover, as the school-based witnesses unanimously agreed, Petitioner's behavior impedes her education and hinders her progress toward reaching her IEP goals. Indeed, as recently as last month, Petitioner engaged in violent and disruptive behavior that required intervention from law enforcement. Thus, Petitioner failed to establish that the School Board's proposed placement—broadly, a behavioral program, and not a specific school—is inappropriate. This claim is denied.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy her burden of proof. All requests for relief are denied.

DONE AND ORDERED this 12th day of May, 2025, in Tallahassee, Leon  
County, Florida.

Case No. 25-0937E

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NICOLE D. SAUNDERS  
Administrative Law Judge  
DOAH Tallahassee Office

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 12th day of May, 2025.

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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).