STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOHNS COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 23-1044EDM

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Respondent.
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FINAL ORDER

Pursuant to notice, a final hearing was conducted in this case on April 5 through 7, 14, and 20, 2023, via Zoom teleconference, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Kristine Shrode, Esquire
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For Respondent: Stephanie Langer, Esquire
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STATEMENT OF THE ISSUE

Whether Petitioner, St. Johns County School Board ("School Board"), established a claim for relief pursuant to Florida Administrative Code Rule 6A-6.03312(7).

PRELIMINARY STATEMENT

On March 9, 2023, a Request for Due Process Hearing ("due process complaint') was filed with the School Board by the parents of an exceptional education ("ESE") student in the St. Johns County School District. The student is in second grade and has a primary exceptionality of Autism Spectrum Disorder ("ASD"). The student was receiving services in a general education classroom with supports, in the child's neighborhood school. The due process complaint contested the February 24, 2023, decision of the Individualized Educational Plan ("IEP") team to change the student's placement to a self-contained ESE unit in a different school.

On the form provided, the parents checked "Yes" to the question, "Is this a request for an expedited due process hearing related to discipline issues?" However, the text of the due process complaint raises multiple issues regarding the alleged failures of the school to provide the child with a free appropriate public education ("FAPE") over the course of the 2022-2023 school year, culminating in a predetermined IEP meeting designed to place the child in the self-contained ESE unit against the wishes of the parents and without consideration of ways to amend the IEP to provide the supports needed to keep the child in a general education setting. The due process complaint was forwarded to DOAH on March 10, 2023, and assigned Case No. 23-0969EDM.

On March 15, 2023, the parents filed a Motion to Determine Stay-Put Placement, stating that the School Board's unilateral removal of the student from the student's home school is a change of placement that invokes the stay-put provisions of 20 U.S.C. § 1415(j) and arguing that the child should remain in the home school until the FAPE issues of the due process complaint are resolved.

Also, on March 15, 2023, the School Board filed a Request for Expedited Due Process, citing rule 6A-6.03312(7)(a), which provides:

> (a) An expedited hearing may be requested:
>
> 1. By the student's parent if the parent disagrees with a manifestation determination or with any decision not made by an administrative law judge (ALJ) regarding a change of placement under this rule; or
>
> 2. By the school district if it believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

The School Board argued that maintaining the child in the home school placement placed the child and other students in danger and that the stay-put placement should be the self-contained ESE classroom called for by the February 24, 2023 IEP revision. The School Board's pleading was assigned Case No. 23-1044EDM.

By Order dated March 17, 2023, the ALJ then assigned to the case granted the School Board's motion to consolidate the cases. The ALJ also ruled, under authority of rule 6A-6.03312(9), that "the student's stay-put placement *during the pendency of this disciplinary matter* is the placement determined by school officials, which is a self-contained classroom with a low student-teacher ratio and behavior support." (emphasis added). By Order dated March 20, 2023, the ALJ denied the student's motion to reconsider the stay-put ruling and ruled that the consolidated cases would go forward on the expedited schedule set forth in rule 6A-6.03312(7)(c).

On March 29, 2023, the consolidated cases were reassigned to the undersigned, who presided over the hearing on the dates set forth above. By a separate Order, the undersigned has severed the consolidated cases, based on

the conclusion that, in light of all the evidence presented at the hearing, the February 24, 2023 IEP amendment was not a change of placement because of disciplinary removals. The School Board has therefore inappropriately invoked the expedited hearing procedure of rule 6A-6.03312(7). Case No. 23-1044EDM will be dismissed. Pending the final order in Case No. 23-0969EDM, the child's stay-put placement will be restored to the general education classroom in the neighborhood school.

FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. The student is [redacted] years old with a primary exceptionality of ASD. The student has been in the St. Johns County School District since kindergarten, though the [redacted] school year has been his first at this neighborhood school. The student entered the neighborhood school in August [redacted] with an IEP and a behavior intervention plan ("BIP") that the student's previous school created on December 6, [redacted].

2. The IEP provided that the student would be in a general education classroom with one-on-one assistance for safety upon arrival, dismissal, transitions, lunch, and "resource" class (e.g., art, physical education, and music). It provided one hour per week of language therapy, ten minutes per week of speech therapy, 30 minutes per week of small group social skills instruction in self-regulation, 20 minutes per week of individual assistance in daily self-management skills, and 80 minutes per week of direct specialized instruction in reading with a focus on fluency and comprehension. It provided 20 minutes per week of direct occupational therapy services. It provided a number of classroom accommodations including repeated directions, verbal encouragement, frequent breaks from school work, and a verbal five-minute warning before any transition.

3. [redacted], the student's general education teacher, testified that the student exhibited some behaviors in the classroom, such as frequently leaving his desk and disrupting the class. Less frequently, the student engaged in physical aggression and property destruction. However, [redacted] testified that from August through November 30, [redacted], the student's behavior was entirely manageable in the classroom. Most of [redacted] communications with the student's parents were upbeat and positive about the student's performance.

4. The overall evidence established that the student did well in school from August through November [redacted]. The student's behavior was occasionally problematic but manageable and the student's standardized reading and math test scores improved, from kindergarten level upon entry in August [redacted] to second grade levels by early December [redacted]. Without question, the student presented a behavior challenge to school staff. Also, without question, the student was succeeding in the general education classroom with the supports provided by the December 6, [redacted] IEP.

5. On November 30, [redacted], the neighborhood school's IEP team convened to perform the annual review of the student's IEP. School personnel believed that the student was doing so well that some supports could be reduced or eliminated. The November 30, [redacted] IEP eliminated the student's one-on-one transition assistance. It eliminated the student's direct occupational therapy services, providing instead for a monthly consultation. It reduced the student's language therapy to 20 minutes per week.

6. Immediately after the November 30, [redacted] IEP was put in place, the student's behaviors escalated in frequency and intensity. The next day, December 1, [redacted], the school called the parents to pick up the student because of a disciplinary episode. Prior to the winter vacation in mid-December, the student was sent home six more times. No formal discipline was imposed and no manifestation determination was contemplated by the school.

7. It appears never to have occurred to school personnel to convene an IEP meeting to reinstate the supports that had worked so well before November 30, [redacted]. At the hearing, school personnel testified that they saw no connection between the new IEP and the student's behavior, but they had no other explanation for the student's sudden turnabout.

8. Instead, the school embarked on a series of improvised responses to the student's increasingly disruptive behavior, some of which may well have exacerbated the situation. The school assigned Assistant Principal [redacted] to be the student's one-on-one assistant because the student had a good rapport with [redacted]. Often, the student would just sit in [redacted] office rather than the classroom. School Psychologist [redacted], testifying on behalf of the parents, stated that the school was intermittently reinforcing the student's bad behavior by giving the student incentives to misbehave: if the student's behavior reached a certain level, the student would get to go home or go play with Legos in [redacted] office.

9. The student's parents cooperated with the school. They dutifully came to the school every time they were called. School Principal [redacted] testified that the school was not requiring the parents to pick up the student when it called them. The student's father more credibly testified that there seemed nothing voluntary about the school phoning him and telling him to come pick up his child.

10. In January [redacted], the school began giving the student formal out-of- school suspensions. There were a total of five suspensions between January 17 and February 17, [redacted]. Whether by design or happenstance, the school stopped the suspensions when the total number of suspension days reached ten. Thus, the manifestation determination threshold of rule 6A-6.03312(3) was not formally crossed.

11. In January [redacted], the parents reluctantly agreed to try a shorter school day for the student. On January 25, [redacted], the school unilaterally amended the student's BIP to make permanent the shortened school day.

12. The record is bereft of evidence that the school made any provision for how the student was to make up the school work missed due to suspensions, early dismissals, or the permanently shortened school day.

13. The student's father testified that the unilateral amendment to the BIP, along with direct suggestions by [redacted] that changing the student's placement should be discussed at the next IEP meeting, caused his family to retain the services of an advocate. The parents began requesting documents from the school and otherwise asserting their rights under the Individuals with Disabilities Education Act ("IDEA"). School administrators complained about the changed "tone" of their relationship with the parents after the advocate became involved.

14. An IEP team meeting was requested by the parents and convened on February 15, [redacted]. [redacted], who attended the meeting on behalf of the student, testified that the parents were "behind the 8-ball" because the school did not provide the relevant documents until the night before the meeting. [redacted] and the student's father testified that the notes of the meeting produced by the School Board were riddled with errors. The parents asked that their written corrections be appended to the notes but the school declined to do so.

15. The IEP team met again on February 24, [redacted], and approved the IEP amendment to place the student in a self-contained ESE unit in a different school.

16. Whether the outcome of the February 24, [redacted] IEP meeting was predetermined is a matter for Case No. 23-0969EDM. For purposes of this case, it is sufficient to note that this was an ordinary, albeit contentious, IEP meeting. No manifestation determination was contemplated. Nothing in the notes or in witness testimony indicates that the IEP team was engaging in a disciplinary removal of the student.

17. In fact, the record indicates that the School Board went out of its way at the time to indicate that this change of placement was *not* disciplinary but

was focused on the student's performance and behaviors. The IEP team discussion *assumed* that the behaviors were a manifestation of the student's disability and that the neighborhood school was simply not equipped to handle the student's increased levels of misbehavior. No witness for the School Board suggested that the behaviors were not a manifestation of the student's disability. The School Board's witnesses emphasized that the early dismissals and shortened school days were not considered disciplinary.

18. None of the criteria for invoking the Interim Alternative Educational Setting provision of rule 6A-6.03312(6) were present in this case. The student did not carry a weapon, possess illegal drugs, or inflict serious bodily injury on another person.

19. The greater weight of the evidence supports a finding that the School Board did not consider the February 24, [redacted] IEP amendment to be a disciplinary removal until after the parents filed for a due process hearing. Only then did the School Board decide, after the fact, to file a petition under rule 6A-6.03312(7)(b), to lock the child in the new placement pending the outcome of the parents' due process complaint.

CONCLUSIONS OF LAW

20. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 1003.57(1)(a) and 1003.5715(5), Fla. Stat., and Fla. Admin. Code R. 6A-6.03311(9)(u).

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

22. The School Board is a local education authority as defined under 20 U.S.C. § 1401(19)(A). By virtue of receipt of federal funding, the School Board is required to comply with certain provisions of the IDEA, 20 U.S.C. § 1401, *et seq*. The School Board is also required to comply with the provisions of chapter 6A-6.

23. Rule 6A-6.03312 is titled "Discipline Procedures for Students with Disabilities." Its opening paragraph provides:

> For students with disabilities whose behavior impedes their learning or the learning of others, strategies, including positive behavioral interventions and supports to address that behavior must be considered in the development of their individual educational plans (IEPs). School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements and procedures in this rule, is appropriate for a student with a disability who violates a code of student conduct.

24. The rule sets forth definitions "applicable to discipline of students with disabilities." The only definition that conceivably applies to this student is "change of placement because of disciplinary removals" at rule 6A-6.03312(1)(a), which provides:

> For the purpose of removing a student with a disability from the student's current educational placement as specified in the student's IEP under this rule, a change of placement occurs when:
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> 1. The removal is for more than ten (10) consecutive school days, or
>
> 2. The student has been subjected to a series of removals that constitutes a pattern that is a change of placement because the removals cumulate to more than ten (10) school days in a school year, because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals, and because of additional factors, such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another. A school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement, and this determination is subject to

review through due process and judicial proceedings.

25. There is no record evidence that the School Board made a determination that this student's "pattern of removals constitutes a change of placement." The school convened an IEP meeting and changed the student's placement for academic and behavioral reasons, not because of disciplinary removals.

26. Rule 6A-6.03312(3) requires a manifestation determination "within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct." The School Board never conducted a manifestation determination. The change of placement was not based on a violation of the code of student conduct.

27. Rule 6A-6.03312(4) provides:

> On the date on which a decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the school district must notify the parent of the removal decision and provide the parent with a copy of the notice of procedural safeguards as referenced in these rules.

28. There is no evidence of a notice to the parents of the "removal decision" because no such disciplinary removal decision was made. The School Board did not make the disciplinary decision to change the student's placement pursuant to this rule; the IEP team made the decision through the ordinary IEP amendment process.

29. Rule 6A-6.03312(7)(b) provides that the School Board may request an expedited hearing "if it believes that returning the student to the original placement is substantially likely to result in injury to the student or others." This provision must be considered not in a vacuum but in light of the overall language of the rule. Rule 6A-6.03312(7)(b) does not give a school district *carte blanche* to invoke the expedited hearing process any time it considers a

student to be a threat. The context is that of a rule setting forth "discipline procedures" and of a student whose placement has been changed "because of disciplinary removals."

30. In this case, the student's placement was not changed because of disciplinary removals. The School Board has invoked rule 6A-6.03312(7)(b) not to maintain the status quo following a disciplinary change of placement but to keep the student in an academic placement with which the parents disagree. This was an inappropriate use of the rule.

31. Case No. 23-1044EDM will be dismissed. The child's stay-put placement, pending the outcome of Case No. 23-0969EDM, will be restored to the "then-current placement" at the time the IEP team adopted the February 24, 2023 IEP amendment, i.e., the general education classroom with the supports included in the November 30, 2022 IEP. *See* Fla. Admin. Code R. 6A-6.03311(9)(y).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that this case is DISMISSED and that the student's placement be restored to the then-current placement before adoption of the February 24, 2023 IEP amendment.

DONE AND ORDERED this 25th day of April, 2023, in Tallahassee, Leon County, Florida.

LAWRENCE P. STEVENSON
Administrative Law Judge
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Filed with the Clerk of the
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this 25th day of April, 2023.

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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).