STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 23-4503E

**,

Respondent.
_____/

FINAL ORDER

This due process hearing was held, by agreement of the parties, on January 12, 2024, via Zoom conference. Jessica E. Varn, an Administrative Law Judge with the Division of Administrative Hearings (DOAH), presided over the hearing.

APPEARANCES

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

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

STATEMENT OF THE ISSUE

Whether the student's recommended placement at an exceptional student education (ESE) center/special day school is the least restrictive environment (LRE) within the meaning of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq*.

PRELIMINARY STATEMENT

The request for a due process hearing (Complaint) was filed on November 17, 2023. On December 14, 2023, a telephonic pre-hearing conference was held by Judge Saunders, who was initially assigned to this case. An Order Memorializing Waiver of Final Order Deadline was entered the next day.

On December 19, 2023, Respondent filed a Motion to Dismiss, which was denied by Judge Saunders on December 22, 2023. On that same date, a Notice of Hearing by Zoom conference was issued for January 12, 2024; and then Respondent filed a Motion for Recusal, seeking that Judge Saunders recuse herself from the case. On December 27, 2023, Judge Saunders granted the Motion to Recuse and the case was transferred to the undersigned.

On the morning of January 12, 2024, just 38 minutes before the start of the hearing, Respondent once again filed a Motion to Dismiss the case. The Motion to Dismiss was denied at the start of the hearing. The hearing proceeded as scheduled.

The School Board presented the testimony of [redacted], District Director of ESE; and [redacted], ESE Specialist at Avocado Elementary School. School Board's Exhibits 2, 3, and 11 were admitted into the record. Respondent testified on behalf of her daughter.

At the conclusion of the hearing, the parties agreed to file proposed final orders seven days after the Transcript was filed, and agreed to extend the deadline for the Final Order to 14 days after the Transcript was filed. The Transcript was filed on January 23, 2024. Proposed Final Orders were due by January 30, 2024; and the deadline for the Final Order was extended to

February 6, 2024. Both parties filed proposed final orders, and they were considered during the drafting of this Final Order.

All references to statutory or regulatory provisions are to the provisions in effect during the relevant time period of this case, when the Complaint was filed. For stylistic convenience, the undersigned will use female pronouns in this Final Order when referring to Respondent. The female pronouns are neither intended, nor should be interpreted, as a reference to Respondent's actual gender.

FINDINGS OF FACT

1. The student here is a [redacted]-year-old girl, in [redacted] grade. She's educated on an access points modified curriculum, is non-verbal, and is eligible for ESE in the educational category of Autism Spectrum Disorder (ASD).

2. She was enrolled in one of this School Board's schools, [redacted] Elementary School, for the first time at the start of the [redacted] school year. [redacted] Elementary School is a general education school that also has self-contained classrooms for ESE students. The student was placed in a self-contained ASD classroom with a low teacher-student ratio, and with an ESE certified teacher and a full-time paraprofessional.

3. The student, as is reflected in the exhibits and gleaned from the testimony at the hearing, is unaware of her surroundings and requires constant close supervision for her safety. She requires hand-holding during all transitions and requires continuous supervision to ensure she does not put non-edible items, such as glue or playdough, into her mouth. She needs extensive verbal, gestural, and physical prompting and assistance to complete any task, including participating in specialized instruction, independent functioning, and communication. Because she cannot speak, she often resorts to crying, pinching, scratching, and biting.

4. She requires assistance for most self-help skills, as well. She will hold eating utensils with her fist, and needs hand-over-hand assistance to use them. She's unable to manipulate classroom tools and materials, such as crayons, for their intended purpose without assistance. She is unable to fully dress herself or use the toilet independently.

5. The first Individualized Education Plan (IEP) meeting took place in September [redacted]. At that point, all team members agreed with all aspects of the IEP.

6. By October, the IEP team reconvened to discuss the parent's concern over the use of a safety harness during the student's ride to and from school, and to discuss the behaviors that were being seen in the classroom.

7. The IEP team reviewed the goals for appropriateness, took teacher and parent input, and requested consent for an assistive technology evaluation to better address the student's communication needs. The team ultimately decided that the student should continue to access her education in a self-contained classroom at Avocado Elementary School with additional communication and technology supports and services.

8. The school-based team members as a whole expressed great concern about removal of the safety harness while on the bus. Because of the student's tendency to wander, her inability to sense danger, her need for constant supervision for her own safety, and her potential for aggressive behaviors, the school-based team members agreed that the safety harness was necessary. The student's mother disagreed. As to the placement issue, the entire team agreed that she should remain in the self-contained classroom at [redacted] Elementary School.

9. In November [redacted], the IEP team once again met. The IEP team identified new goals and accommodations necessary to assist the student in academic, developmental, and functional areas. The additions were: prompt student to use restroom every hour to assist with toilet training, allow student to sit away from hallway and windows to minimize distractions,

allow opportunity for movement during activities, use of manipulatives, use of a picture/word choice board, and use of a slant board. The team also discussed the need for specialized one-to-one instruction in all academic areas by an ESE teacher, the inclusion of 30-minute weekly sessions of language and speech therapy, adaptive physical education, as well as extended school year services. The IEP also indicates that a behavior plan needs to be in place to reduce the student's impulse to eat non-edible things.

10. As to the placement of the student, the IEP team considered many factors, including: the student's frustration and stress; the student's self-esteem and self-worth; her distractibility; her need for lower pupil-to-teacher ratio; the time required to master educational objectives; safety concerns because of physical conditions; the student's lack of emotional control, which resulted in harming self and others; her social skills, which could lead to increased isolation; and her significant difficulty with completing tasks. The team concluded that the best placement to implement the new IEP with the added necessary supports and services would be a special day school, such as [redacted].

11. A special day school is a public school to which non-disabled peers do not have access. The IEP team determined that the student needs more services than can be provided by [redacted] Elementary School, or any other traditional school in Miami-Dade County. Her growing need for additional support, services, and supervision during her initial three months at [redacted] Elementary School reached the point where a more intensive therapeutic program was required. The student's mother at first agreed with the placement at the special day school, but she later retracted her consent due to her disagreement with using the safety harness during transportation to and from school.

12. [redacted] has 50 to 60 students, unlike a general education school that may have over 600 students. It has a lower teacher-to-student ratio, designated school psychologists and therapists, social workers

with smaller caseloads, teachers that have extensive experience working with students with more complex needs, sensory rooms, adaptive playgrounds, and improved use of communication devices and assistive technology for their students. The teacher-to-student ratio is typically as small as five students with one ESE teacher and the aide of two more paraprofessionals along with a plethora of other designated therapists.

13. The preponderance of the evidence establishes that the placement at a special day school mainstreams the student to the greatest extent appropriate, and, as such, placement at a special day school is approved.

CONCLUSIONS OF LAW

14. 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).

15. The burden of proof is on the School Board to prove the claim by a preponderance of the evidence. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309, 1313 (11th Cir. 2003); *Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 1291 (11th Cir. 2001).

16. The IDEA provides directives on students' placements or education environments in the school system. Title 20 U.S.C. § 1412(a)(5)(A) 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.

17. With the LRE directive, "Congress created a statutory preference for educating handicapped children with nonhandicapped 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 [IDEA], school districts must both seek to mainstream handicapped 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).

18. 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.

Daniel, 874 F.2d at 1048.

19. In *Greer*, the eleventh circuit adopted the *Daniel* two-part inquiry. In determining the first step, whether a school district can satisfactorily educate a student in the regular classroom, several factors are to be considered: (1) a comparison of the educational benefits the student would receive in a regular classroom, supplemented by aids and services, with the benefits she will receive in a self-contained special education environment; (2) what effect the presence of the student in a regular classroom would have on the education of other students in that classroom; and (3) the cost of the supplemental aids and services that will be necessary to achieve a satisfactory education for the student in a regular classroom. *Greer*, 950 F.2d at 697.

20. The preponderance of the evidence demonstrated that the student requires levels of supports and services that are not offered in a traditional

elementary school setting. The evidence clearly established that the student needs a smaller environment with more robust services and supports.

21. Additionally, deference should be paid to the educators 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. Here, the school-based team members credibly testified that [redacted] Elementary School did not offer the supports and services the student requires.

22. It is undisputed that the proposed placement neither offers the student a traditional elementary school experience nor interaction with her non-disabled peers, but it is clear from the evidence that the student's history of self-injurious and dangerous behaviors, coupled with her intense need for individualized instruction and supervision, warrants placement at a special day school.

23. Placement at a special day school mainstreams the student to the maximum extent possible and, therefore, complies with the mandate that the student be educated in the LRE.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the student's placement at a special day school is approved.

DONE AND ORDERED this 5th day of February, 2024, in Tallahassee, Leon County, Florida.

JESSICA E. VARN
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of February, 2024.

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).