

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

ST. JOHNS COUNTY SCHOOL
BOARD,

Petitioner,

Case No. 25-0291EDM

vs.

**,

Respondent.

FINAL ORDER

This expedited due process hearing was held, by agreement of the parties, on February 19, 2025. The hearing was held at [REDACTED] School in St. Johns, Florida. Jessica E. Varn, an administrative law judge with Florida's Division of Administrative Hearings (DOAH), presided over the hearing.

APPEARANCES

For Petitioner: Terry Joseph Harmon, Esquire
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

For Respondent: Parent of the student, pro se
(Address of Record)

STATEMENT OF THE ISSUE

Whether maintaining the student's current placement is substantially likely to result in injury to himself or others, thereby changing the student's placement to an interim alternative educational setting (IAES) for no more than 45 school days.

PRELIMINARY STATEMENT

The request for an expedited due process hearing was filed on January 17, 2025. On January 31, 2025, a pre-hearing telephonic conference was held with the parties. The parties agreed to schedule the hearing on February 19, 2025.

The hearing was held on that date. The parties stipulated to the admission of both parties' exhibits. Accordingly, School Board Exhibits 1 through 40, 42 through 46, and 48 through 59 were admitted; and Respondent Exhibits 1 through 12 were admitted. The School Board presented the testimony of: [REDACTED], Assistant Principal; [REDACTED], Behavior Specialist; [REDACTED], Paraprofessional; and [REDACTED], Director for Exceptional Student Education (ESE). Respondent's mother testified on behalf of [REDACTED] son. The Findings of Fact will not address each witness's testimony or every exhibit entered into the record, but all testimony was considered and all exhibits were reviewed in preparing this Final Order.

At the end of the due process hearing, the parties agreed to file proposed final orders by February 28, 2025. The Transcript was filed on February 27, 2025; and both parties timely filed proposed final orders, which were considered in the preparation of this Final Order.

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 █ years old and in █ grade, at a comprehensive high school. He is eligible for ESE services under the categories of Autism Spectrum Disorder (ASD), Language Impaired, and Speech Impaired. He spent his █ and █ grades at a different █ school, in the same school district. █ School was therefore new to him when he began his █ year.

2. █ School is a large █ school, with around 2,500 students. He takes his math, reading, and English classes in a self-contained ESE classroom, and takes history, drama, science, and film in general education classrooms. Most of his general education classes are in the afternoon.

3. The student is educated on an Access Points curriculum, and he is assigned a 1:1 paraprofessional for the entire school day. He has some intelligibility challenges, low cognitive skills, and multiple maladaptive behaviors that result in physical harm to himself and others on the school campus. He is the size of a grown adult male, so when he hits, bites, yanks and pulls out hair, or tries to strangle the faculty members, he often inflicts bodily harm.

4. For the first two months of his █-grade year, the staff focused on building relationships with him, and avoided placing too many demands on him. They quickly learned that he is a complex student; that he is highly unpredictable; and that he has a heightened sensitivity to words often used in everyday school life, such as “no,” “wait,” and “good.”

5. By the end of October, there was a major incident that stemmed from another student responding “yep” instead of the preferred “yes” to a question that Respondent had asked—this caused him to attempt to write the word “yes” on a piece of paper, which then snowballed into a dangerous situation:

[He] took the paper, shoved it into the student’s face 4 times, then started screaming at █. [He] then

began hitting objects, the wall and then eloped out of the classroom. Para[professional] followed [him] out into the hallway, tried to talk to [him] calmly. [**] grabbed the para's shirt, placed him in a head lock. [He] then attacked another para tearing his shirt, scratching him in the neck. [**] tried to hit, bite, kick and tear staff members shirts. [**] ran down the hall and then into the courtyard where [he] finally was able to calm.

6. The next week, on November 4 and 8, [REDACTED], two female students reported that the student had inappropriately touched them on their breasts.

7. On November 12, [REDACTED], after lunch, a faculty member asked the student to pull down his own shirt, which was up. Upset by the direction, he:

started walking towards a para in the classroom chasing [REDACTED] around a table. Another teacher called [**]'s name to redirect [him]. [He] went up to that teacher and punched her in the stomach. [**] then left the classroom. During [his] escalation, [**] hit 5 other staff members.

8. On December 3, [REDACTED], after the Thanksgiving break, a student reported that Respondent pushed [REDACTED] as he was exiting drama class. A day later, the student poked a staff member on [REDACTED] waistline, twice, stating that he could not help himself. And then again on December 9 and 10, [REDACTED], three students reported that he inappropriately touched their breasts.

9. On December 17, [REDACTED], a major incident occurred, involving several injuries to staff members. It started when a staff member, after being poked in the stomach, raised [REDACTED] voice, telling the student not to touch [REDACTED]. The student's response was:

[**] attacked multiple staff members by hitting, biting, grabbing and tried to rip their shirts off. [**] also grabbed three staff members by the hair with both hands. One of them [he] pulled to the ground with [him] pulling out a chunk of the staff members hair.

10. Once the Spring Semester started, more staff injuries piled up. On January 8, [REDACTED], during a general education class in the afternoon, another drawn out incident occurred:

During [REDACTED] period [**] went up to another student and grabbed [REDACTED] shirt. [He] went back to [his] seat where [he] hit [his] desk with [his] fist, [he] then got back up and walked back over to the student to try and grab [REDACTED] shirt again. The student tried to block [**] from grabbing his shirt, but [**] reached around [REDACTED] hand. [**] began escalating and [his] para asked [him] if [he] needed a break and to leave the classroom for a walk. While heading downstairs [**] became increasingly escalated and [his] para called for additional support. [**] eloped to the front of the school near the auditorium. During this time, [he] tried to hit, grab, and bite several staff members.

11. The following school day, on January 9, [REDACTED] and also during his general education class periods, this occurred:

During [REDACTED] period [**] attempted to enter room [REDACTED], an active classroom at the time, which is not [his] assigned classroom. [His] para tried to redirect [him] several times without success. [**] then became physically aggressive towards staff. [His] actions included continuous attempts to hit strike, bite, and pull at/remove staff clothing. [**] was able to successfully grab two staff members by the shirt collar. At this time Ukeru pads were deployed. [**] eloped to the courtyard in between the gym and the [REDACTED] hallway. Several and continuous attempts were made to deescalate [him] but were unsuccessful. [**]'s behavior became increasingly more aggressive and disruptive towards staff. [His] continuous and increasingly aggressive behavior caused concern for the safety and security of staff and students who transit this area during modified dismissal and class exchange. Steps were taken to secure the area and prevent students from transitioning between the gym and the main building.

12. Earlier on this same day, another student reported that during the transition to [REDACTED] period, Respondent had tried to touch [REDACTED], and when the student tried to run away, Respondent turned to grab [REDACTED] sweatshirt.

13. The next day, on January 10, [REDACTED], also in the afternoon, yet another major incident occurred.

[**} requested to see a teacher during class time. [His] para told [him] that it was during class and that they were unable to disrupt another teacher's class. [**] then eloped from the classroom stating [he] was going to see the teacher. [**] became physically aggressive towards staff. [His] actions included continuous attempts to hit strike bite and pull at/remove staff clothing. [**] eloped again to parent pick up where continuous attempts were made to deescalate [him] using the Ukeru pads but were unsuccessful. [**}'s behavior became increasingly more aggressive and disruptive towards staff. [His] continuous and increasingly aggressive behavior caused concern for the safety and security of staff and students who transit this area during modified dismissal. Modified students who normally exit through this area were redirected to the main office and had to exit the campus through the main parking lot of the school.

14. Throughout these major incidents, video footage reflects that the narratives quoted above, written by school staff, are quite understated. The videos reflect a student in fight mode, chasing and charging at the school staff, wanting to lash out and hit anyone in his path. Many faculty members have been injured by the student's attacks, intentionally and incidentally.

15. His mother persuasively testified that the student is not violent at home, or out in the community with his parents. Unfortunately, while on [REDACTED] School's campus, the student becomes agitated in a manner that harms himself and others.

16. The record evidence overwhelmingly reflects that the student is substantially likely to continue injuring himself or others if he remains at [REDACTED] School.

17. The IAES is an ESE Center school; a small therapeutic setting with a low staff-to-student ratio and limited enrollment (43-44 students total). The school focuses on mental well-being, provides intense behavioral support, and is able to implement the student's individualized education plan (IEP) and behavior intervention plan (BIP). The IAES school can also work on the student's social/emotional skills, tolerance, daily living skills, and emotional regulation. The full mental health and behavior staff on campus, including a full-time behavior specialist, several registered behavior technicians, and a psychiatrist, can meet his current needs.

CONCLUSIONS OF LAW

18. DOAH has jurisdiction over this case pursuant to section 120.65(6), Florida Statutes; and Florida Administrative Code Rule 6A-6.03312(7).

19. The School Board carries the burden of proving all elements of its claim. "The burden of proof in [a due process hearing] is properly placed upon the party seeking relief." *See Schaffer v. Weast*, 546 U.S. 49, 61 (2005); *see also West Platte R-II Sch. Dist. v. Wilson*, 439 F.3d 782, 784 (8th Cir. 2006); *Devine v. Indian River Cnty.Sch. Bd.*, 249 F.3d 1289, 1292 (11th Cir. 2001), *cert. denied*, 123 S. Ct. 82 (2002).

20. The Individuals with Disabilities Act (IDEA) requires that any time a school district proposes to change the placement of a student because of a violation of the code of conduct, "the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine - (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the

child's disability; or (ii) If the conduct in question was the direct result of the local educational agency's failure to implement the IEP." 20 U.S.C. § 1415(k)(1)(E).

21. If the behavior is determined not to be a manifestation of the student's disability, "the relevant disciplinary procedures to children without disabilities may be applied to the child in the same manner and for the same duration as the procedures would be applied to children without disabilities..." 20 U.S.C. § 1415(k)(1)(C).

22. If the behavior is found to be a manifestation of the student's disability, the student must be returned to the placement from which the student was removed absent the existence of a "special circumstance" or unless the parent and local educational agency agree otherwise. 20 U.S.C. § 1415(k)(1)(F).

23. That said, if the local educational agency believes that maintaining the student's current placement is substantially likely to result in injury to the student or others, it may appeal the decision by requesting an expedited due process hearing. 20 U.S.C. § 1415(k)(3); Fla. Admin. Code Rule 6A-6.03312(7)(a)2.

24. When an appeal under 20 U.S.C. § 1415(k)(3) is sought by the local educational agency:

The child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise...

25. After completing an expedited due process hearing on a local educational agency's appeal, the hearing officer may:

Return a child with a disability to the placement from which the child was removed; or

order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

20 U.S.C. § 1415(k)(3); Fla. Admin. Code Rule 6A-6.03312(8).

26. As described above in the Findings of Fact, the student has injured multiple faculty members at [REDACTED] School multiple times. The School Board has shown, by a preponderance of the evidence, that the student is substantially likely to injure himself or others if he remains at [REDACTED] School.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the student's placement must be changed to the IAES for no more than 45 school days, because maintaining his placement at [REDACTED] School is substantially likely to result in injury to himself or others.

DONE AND ORDERED this 4th day of March, 2025, in Tallahassee, Leon County, Florida.

~~Case No. 25-0291EDM~~

JESSICA E. VARN
Administrative Law Judge
DOAH Tallahassee Office

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

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of March, 2025.

COPIES FURNISHED:

Amanda W. Gay, Esquire
(eServed)

Bryce D. Milton, Educational Program Director
(eServed)

Terry Joseph Harmon, Esquire
(eServed)

Respondent
(eServed)

Amy J. Pitsch, Esquire
(eServed)

David Chappell, Acting General Counsel
(eServed)

Tim Forson, Superintendent
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).