STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs. Case No. 24-0326E

ST. JOHNS COUNTY SCHOOL BOARD,

Respondent.
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FINAL ORDER

A due process hearing was held on April 1 and 3 through 5, 2024, before Administrative Law Judge Nicole D. Saunders of the Division of Administrative Hearings (DOAH), via Zoom conference.

APPEARANCES

For Petitioner: Stephanie Langer, Esquire
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Palmetto Bay, Florida 33157

For Respondent: Terry Joseph Harmon, Esquire
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STATEMENT OF THE ISSUES

Whether the School Board predetermined the student's placement in a self-contained exceptional student education (ESE) classroom;

Whether the School Board provided the parent(s) with an opportunity to meaningfully participate in the January 17 and 22, 2024, individualized education plan (IEP) meetings;

Whether changing the placement to a self-contained ESE classroom is a denial of a free appropriate public education (FAPE); and lastly,

Whether the School Board failed to place the student in the least restrictive environment (LRE).

PRELIMINARY STATEMENT

On January 23, 2024, Petitioner filed a request for due process hearing (Complaint) with the School Board; and the School Board forwarded the Complaint to DOAH the same day. On January 24, 2024, the undersigned issued a Case Management Order, detailing the deadlines and procedures governing this case. On February 5, 2024, the School Board responded to Petitioner's Due Process Complaint.

Then, on February 19, 2024, the undersigned ordered the School Board to file a status report no later than February 23, 2024, as to the outcome of the resolution session. The School Board timely complied by filing a Notice of Outcome of Resolution Meeting (Notice) on February 23, 2024. In the Notice, the School Board stated that the parties had attended a resolution meeting, but had not resolved the issues raised in the Complaint. That same day, Petitioner filed a Request for Expedited Hearing (Expedited Hearing Request), asserting that while this case was pending, the School Board had violated the stay-put provision of the Individuals with Disabilities Education Act (IDEA) by obtaining a state court injunction to remove Petitioner from all of his general education classes.

On February 26, 2024, the undersigned issued a Notice of Telephonic Pre-Hearing Conference solely to discuss the Expedited Hearing Request.[1] On February 29, 2024, the telephonic pre-hearing conference proceeded as scheduled. During the conference, the undersigned heard arguments from Petitioner and the School Board regarding the Expedited Hearing Request and set the final hearing for March 19 through 21, 2024. Additionally, at the School Board's request, the undersigned reserved ruling on the Expedited Hearing Request to allow the School Board an opportunity to submit a written response.

The School Board responded to the Expedited Hearing Request on March 1, 2024. That same day, Petitioner filed an unopposed Request to Include Additional Issues for Final Hearing. On March 4, 2024, the undersigned issued an Amended Notice of Hearing by Zoom Conference and an Order denying Petitioner's Expedited Hearing Request.

Then, on March 19, 2024, the parties filed a Joint Motion for Continuance, seeking more time to resolve the issues outlined in the Complaint and proposing several dates for rescheduling the final hearing. Later that day, an Order Rescheduling Hearing by Zoom Conference and Extending Time for Final Order was issued, resetting the final hearing to April 1 and 3 through 5, 2024.

The hearing occurred as scheduled.[2] At the hearing, Petitioner offered testimony from seven witnesses: Kaley Presnell, ESE Program Specialist; Dr. Timothy King, educational expert; Jenny Wojcik, educational advocate; Erica Crowley, private Board Certified Behavioral Analyst (BCBA); Rachel Ayres,

[1] The undersigned also issued an Amended Notice of Telephonic Pre-Hearing Conference on February 27, 2024, moving up the date of the pre-hearing conference.
[2] All members of the public who attended were muted and their video cameras were turned off.

BCBA for the School Board; Gloria Chandler, Petitioner's ESE teacher and Case Manager; and Petitioner's father. The undersigned admitted Petitioner's Exhibits 1 through 5, 10 through 19, 22 through 34, 36, and Rebuttal Exhibit 4 into evidence.

For its part, the School Board presented testimony from Joanne Hervol, Petitioner's general education Science teacher; Lance Day, Petitioner's wrestling team coach; George Freeman, an ESE Program Specialist; and Ryan Sirak, Assistant Principal. The undersigned admitted the School Board's Exhibits 1 through 10, 17 through 28, 30 through 32, 34 through 42, 44, 45, 47, 49 through 51, and 54 through 56 (rebuttal exhibit) into evidence.

At the close of evidence, the parties agreed to file proposed final orders 12 days after the filing of the Transcript with DOAH; and the undersigned agreed to issue this Final Order no later than 20 days after the Transcript was filed.

The complete Transcript was filed on April 25, 2024, and the parties had an opportunity to file proposed final orders by May 7, 2024.

Then, on May 3, 2024, the School Board filed an unopposed motion, seeking a six-day extension of the deadline for submission of proposed final orders. The undersigned granted the request, resetting the deadline for proposed final orders to May 13, 2024, and extending the final order deadline to May 21, 2024. On May 15, 2024,[3] Petitioner filed an unopposed motion for a four-day extension of the proposed final order deadline. The undersigned granted the request on May 16, 2024, extending the deadline for submission of proposed final orders to May 17, 2024. The parties timely submitted

[3] Because of severe weather, DOAH was closed from May 10 through May 14, 2024.

proposed final orders, both of which were considered in preparing this Final Order.

Unless otherwise indicated, all rules and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, the undersigned uses male pronouns when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. Petitioner is a 16-year-old high school student who enjoys wrestling and technology. He is eligible for special education and related services based on these disabilities: Autism Spectrum Disorder (ASD), Language Impairment, and Speech Impairment. Due to his deficits in cognition, communication, attention, and working memory, Petitioner accesses his education on a modified curriculum, Access Points.

2. Aside from his academics, Petitioner's disabilities also impact his behavior. His struggles with social communication and emotional regulation manifest in various maladaptive ways, from verbal behavior to physical aggression. Historically, Petitioner's behaviors have fallen along a continuum of severity, from low magnitude (yelling and non-aggressive touching) to high magnitude (kicking, scratching, biting, elopement, and self-harm). Typically, Petitioner's acts of physical aggression are against school staff, rather than his fellow students.

3. Petitioner also has a variety of known triggers, such as waiting, being told no, and words, like "good."

4. Due to his ASD, Petitioner thrives on a consistent schedule, and requires advanced notice, modeling, and social stories, to effectively adapt to changes in his daily routine. Put plainly, abrupt changes to Petitioner's schedule may trigger his challenging behavior. And while Petitioner is

independent in most activities of daily living in the school environment, he requires the constant companionship of a trained paraprofessional.

5. Over the years, Petitioner's behavioral challenges have resulted in school discipline—including referrals and suspensions—hindering his ability to access his education. As his elementary and middle school discipline records show, when agitated, Petitioner may kick, bite, and scratch school staff. He may also elope from his classrooms, and, at times, engage in property destruction. Because of these challenges, Petitioner's IEPs have generally called for him to spend most of his school days in ESE resource classrooms.

6. When Petitioner started high school in the Fall of 2022, his problematic behaviors were still occurring. Thus, in September 2022, with his parents' consent, Petitioner underwent a functional behavior assessment (FBA). By way of background, an FBA is a scientific process, in which a student is observed across multiple settings within the school environment.

7. Data is collected on a student's behavior and target (or challenging) behaviors are identified. For each target behavior, the behavior's antecedent (preceding behavior) as well as consequent (following behavior) is identified. From this data, a positive behavior intervention plan (BIP)—a tool that employs research-based methods for reducing target behaviors and replacing them with more appropriate ones, is created.

8. Data drives behavioral interventions. Thus, the collection of clear, consistent data is key to implementing a BIP.

9. In September 2022, BCBA Rachel Ayres completed Petitioner's FBA. To perform the assessment, she observed Petitioner over 12 days, identifying his target behaviors and sorting them into three broad categories: self-harm, inappropriate contact with others, and physical aggression. Underneath each category, she defined the behavior, noted its frequency and duration, identified where the behavior occurred, and described the behavior's antecedents and consequents.

10. Based on this data, Ms. Ayres drafted a BIP in October 2023; and on October 13, 2023, the school staff put Petitioner's BIP into action. Within one month, one of Petitioner's targeted behaviors—touching strangers' noses—subsided. But as the School Board's discipline records show, Petitioner unsurprisingly continued to experience behavior challenges. Throughout this time, Petitioner spent most of his school day in a separate ESE resource classroom.

11. Petitioner's tenth grade year began on August 10, 2023. At that time, Petitioner's IEP team made changes to his schedule by increasing his time in general education classrooms. Petitioner enrolled in seven classes, three in general education (Science, Chorus, and Social Studies/History), and four in ESE resource classrooms (Preparation for Adult Living, English Language Arts, Algebra, and Social and Personal Skills).

12. Petitioner received paraprofessional support in all of his classes. Unlike Petitioner's general education courses, which had over 30 students and less staff support, Petitioner's special education classes were highly structured environments with very small class sizes and extensive supervision. There were no more than nine students and at least two adults in each of his ESE courses.

13. When the school year began, school staff tracked Petitioner's behavior through communication logs. The communication logs were sheets organized into three columns, with separate headings, one for the time and activity, one for Petitioner's performance, and one for any comments the observer wished to share. Petitioner's paraprofessionals and case manager were responsible for the collection of data through the communication logs.

14. Communication log records from August 10 through September 11, 2023, indicate that Petitioner met his behavior goals over 80 percent of the time. At the final hearing, Ms. Hervol, Petitioner's general education science teacher, provided context to this data. She testified that when Petitioner was in her class, he never kicked, scratched, or bit anyone. Not his teacher, not

his paraprofessional, not his classmates. He also cooperated with Ms. Hervol's rules about cellphone use. And although she had to evacuate her classroom once because of Petitioner running around, she developed a strategy to reduce the effect of Petitioner's low magnitude behaviors on the rest of the class—seating him near the classroom door. Moreover, none of Petitioner's behaviors while in Ms. Hervol's class prompted her to call his mother. Indeed, when Petitioner's behaviors were regulated, he posed no disruption to her class at all.

15. That is not to say Petitioner's behavior in general education courses was flawless. He received a referral on September 6, 2023, for severe conduct during one of his general education classes. Eight days later, he had another major disciplinary incident when he tried to use a piece of wood to beat the classroom window after his schedule changed from Chorus to Physical Education (PE).

16. On September 20, 2023, Petitioner's IEP team met to discuss his services and school schedule. During that meeting, Petitioner's entire IEP team, including his parent, decided to transform his class schedule, removing him from History, Science, and Chorus, and placing him entirely in ESE resource classrooms.

17. The rationale behind this decision is unclear. As the data shows, at the time of the September IEP meeting, Petitioner generally performed better in his general education courses than in his ESE classes. His calmer demeanor in his general education classroom also bothered his classmates less. While Petitioner's general education classmates sometimes expressed "slight" discomfort and a "little" fear regarding Petitioner's behavior, his special education classmates were "afraid" of him, and sometimes required comfort from teachers during Petitioner's escalations. Overall, Petitioner's behavior in general education classes was simply less volatile than in his ESE resource classrooms.

18. During the September 20, 2023, meeting, the IEP team also altered how Petitioner's behavioral data would be collected. The updated data collection sheets outlined the target behavior and where it occurred. It also included space to specify whether Petitioner had an outburst, whether his behavior required staff to call for assistance, the number of assignments Petitioner completed, the number of prompts he was given, whether Petitioner requested a break, and whether he utilized the strategy of waiting. Consistent with Petitioner's new schedule, the data sheet collected information about Petitioner's behaviors in self-contained classes only.

19. Before ending the meeting, Petitioner's IEP team created a staggered entry plan in which Petitioner would integrate back into his mixed general education/ESE resource classroom schedule. Beginning on September 27, 2023, Petitioner would re-enter US History. Two days later, he would re-enter Earth/Space Science. Finally, on October 4, 2023, Petitioner would join Photography. Furthermore, the IEP team tasked Petitioner's ESE teachers with introducing him to his elective teachers and allowing him to see the new classroom and ask his teachers questions.

20. As drafted, the staggered re-entry plan would significantly alter Petitioner's class schedule, surroundings, and classmates over the span of one week.

21. Unsurprisingly, Petitioner's behavioral challenges increased. On October 2, 2023, he eloped from class and began banging on classroom windows and doors. On October 4, 2023, he again beat on classroom doors when reminded that his schedule had changed from Chorus to Photography. This incident was significant and resulted in injuries to several staff members.

22. Petitioner also struggled academically, requiring more prompting throughout the day.

23. During this time, school staff members continued to collect data. The School Board's Behavior Data Update summarized Petitioner's academic and

behavioral progress between September 20 through October 4, 2023, as follows:

> Across the past 7 school days, the team collected data regarding the level of support provided to the student to support [his] IEP goals. *[***] required assistance throughout most of [his] school day to complete assigned tasks, transition between classes, and manage behavior.* Times of day where additional assistance was not needed most consistently was at the bus loop, lunch, and 1st period (career prep). (emphasis added).

24. The schedule changes also impacted Ms. Ayre's ability to collect clear data. As she testified, because of Petitioner's schedule changes, she had to constantly modify her data presentation methods, resulting in confusion at times.

25. The data from September 21 through October 31, 2023, showed higher incidences of low magnitude behavior in general education classrooms and a higher incidence of high magnitude behavior in the ESE resource classes. Ayres' data summaries also contained an important caveat: "Difficulties have primarily occurred *during transitions between classrooms* when unexpected or undesired situations occur." (emphasis added).

26. Throughout most of October, Petitioner's behavior stabilized. On November 7, 2023, the IEP team conducted another meeting. The meeting notes indicate that Ms. Chandler reported that Petitioner continued to engage in unwanted touching; while Ms. Hervol stated that though he seemed angry and less engaged than at the start of the school year, Petitioner's outbursts had been lowered in magnitude and were controlled with the support of his paraprofessionals. Over the following weeks, Petitioner continued with his mixed schedule of general education and ESE courses.

27. November 2023 turned out to be a successful month for Petitioner with him consistently meeting his behavioral goals for emotional regulation, gaining attention, and following directions.

28. That said, Petitioner's positive behavior trend took a downward turn on December 6, 2023. Discipline records, behavioral sheets, and police reports of the incident describe it as follows: On the morning of December 6, 2023, Petitioner was with his paraprofessional when they passed a secretary's office. As they walked by, the secretary said "Good morning" to the paraprofessional. Petitioner overheard and attempted to correct the secretary, insisting that she say "great" instead of "good." When she refused, Petitioner became agitated, approached her, and struck her three times. The secretary then summoned help, and Petitioner ran down the hall. Staff tried to direct Petitioner into his class; however, he came back to the secretary's office, reached over staff members, and removed the secretary's glasses from her head, scratching her in the process.

29. School staff reported the incident to law enforcement the next day and police investigated the incident on December 11, 2023, ultimately finding probable cause that Petitioner committed battery. Petitioner received a two-day suspension and was allowed to return on December 11, 2023. He received another suspension two days later for kicking a hole in the wall after staff informed him that he could not speak with the secretary.

30. Importantly, Ms. Ayres's data collection summary sheets describe the December 6, 2023, incident as occurring in the general education classroom, which is inconsistent with all other evidence describing the situation.

31. Petitioner received another suspension on December 19, 2023, for an outburst involving a stuffed animal. Around this time, the School Board began conducting manifestation determination reviews (MDRs) regarding Petitioner's behaviors. As a result of the MDRs, the School Board found both Petitioner's December 13 and 19, 2023, incidents to be manifestations of his disabilities. Yet there is no evidence that the School Board conducted an MDR regarding the December 6, 2023, incident.

32. By the end of the Fall 2023 semester, Petitioner had seven behavioral incidents for inappropriate conduct, battery, and abuse of school property. He

had also been suspended out of school for 11 days. Data collection sheets from the end of the semester showed that Petitioner's behavior in his general education classes remained generally positive; with him meeting his behavior goals in such classes about 80 percent of the time.

33. Spring semester started on January 8, 2024. At that time, Petitioner attended four courses in separate ESE resource classes and three in general education. Petitioner continued to experience behavior challenges, but, like before, his behavior was generally worse in the ESE resource classrooms than in general education.

34. Petitioner's MDR team found each of his January 2024 disciplinary infractions to be manifestations of his disabilities as well.

35. The next time Petitioner's IEP team met was on January 17, 2024. The purpose of the meeting was to begin to reevaluate Petitioner's educational needs, identify his present levels of academic achievement, and determine the need for any additions or modifications to his educational plans.

36. Ms. Ayers presented data showing 17 outbursts between December 11, 2023, and January 16, 2024—eight in the general education classroom and nine in ESE resource classrooms. Underneath her summary, she outlined the dates of the outbursts: December 4, 5, and 6. There are no discipline narratives for the December 4 and 5 incidents.

37. Ms. Ayres also presented data from December 11, 2023, to January 16, 2024. Of the 11 incidents documented during that time, seven occurred in an ESE resource classroom and four in general education classes. Moreover, while the data sheet noted behavioral incidents on December 11, 14, 15, and 18, 2023, and January 10 and 12, 2024, there were no corresponding discipline narratives clarifying where those incidences occurred.

38. Notes from the January 17, 2024, IEP meeting show that Petitioner's parent actively participated. When she requested Petitioner have a formal reevaluation, the rest of the IEP team agreed. When she requested that no

social skills training occur during Petitioner's general education classes, the school-based members of the IEP team complied. At the end of the January 17, 2024, meeting, the IEP team agreed to convene again on January 22, 2024.

39. At that meeting, there were only two items on the agenda—Petitioner's behavior and his placement. Offering the rationale that additional time in ESE resource classes would increase Petitioner's ability to work on social skills, the school-based members of the IEP team recommended Petitioner's removal from all general education classes, except PE.

40. Petitioner's parent objected, pointing to Ms. Ayres's data, demonstrating that Petitioner performed better behavior-wise in the general education setting. She also raised concerns with the 60 minutes allotted to Petitioner's social skills instruction. The school-based members of the IEP team noted this concern and agreed to break out the 60 minutes of training throughout the day. Ultimately, the school-based members of the IEP team agreed to remove Petitioner from all, but one, of his general education classes, over his parent's objection.

41. During the final hearing, the School Board's witnesses credibly testified that they entered both the January 17 and 22, 2024, IEP meetings with open minds regarding Petitioner's placement.

42. At the time of the placement change, Petitioner was experiencing more outbursts in his ESE resources classes than in the general education setting. He was also meeting his behavior goals in general education over 70 percent of the time.

43. Petitioner's placement changed at the end of January 2024. Since that time, he has been suspended from school for 16 days and missed around 100 classes.

44. Ultimately, the greater weight of the evidence shows that the behavioral data collected as of January 22, 2024, did not support Petitioner's

removal from his general education classes. Thus, the School Board's decision to change Petitioner's placement on January 22, 2024, constituted a violation of the IDEA's LRE mandate.

CONCLUSIONS OF LAW

45. 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).

46. 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).

47. 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).

48. 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).

49. 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.*

50. 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).

51. 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, 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).

52. Petitioner raises four issues in the Complaint. First, whether the School Board predetermined the student's placement in a self-contained ESE classroom. Second, whether the School Board provided the parent(s) with an opportunity to meaningfully participate in the January 17 and 22, 2024, IEP meetings. Third, whether changing the placement to a self-contained ESE classroom is a violation of the LRE mandate, and fourth, whether changing the placement to a self-contained ESE classroom is a denial of FAPE.

This Final Order addresses each of these allegations in turn.

Predetermination

53. 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).

54. 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").

55. 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 preformed opinions on what is appropriate for 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.

56. 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.*

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

58. Here, Petitioner asserts that the School Board planned to remove Petitioner from his general education classrooms before the January 17 and

22, 2024, IEP meetings began. He bases this assertion, primarily, on school staff's stated opinions that Petitioner should have remained in ESE resource classrooms longer than he did in Fall 2023. He also points to the progressive pattern of discipline Petitioner received.

59. However, the greater weight of the evidence undercuts this conclusion. It is undisputed that Petitioner's parent actively participated in both the January 17 and 22, 2024, IEP meetings. When she requested Petitioner undergo a formal reevaluation, the school-based members of the IEP team agreed. When she requested that no social instruction occur during Petitioner's general education classes, the rest of the IEP team complied. The School Board's witnesses also credibly testified that they entered both the January 17 and 22, 2024, IEP meetings with open minds, ready to receive information and make an informed decision. While Petitioner's mother ultimately, and appropriately, disagreed with the rest of the IEP team's decision to change Petitioner's placement, the greater weight of the evidence establishes that the decision was not predetermined. Thus, the undersigned denies Petitioner's predetermination claim.

Meaningful Participation

60. Petitioner also asserts that the School Board precluded Petitioner's parent from meaningfully participating in the January 17 and 22, 2024, IEP meetings because of the inaccurate data shared during those meetings.

61. This claim also fails. As the IEP notes from January 17 and 22, 2024, indicate, Petitioner's mother actively discussed her concerns about Petitioner's placement; and the IEP team considered her concerns in crafting the amended IEP. As mentioned above, when Petitioner's mother openly made suggestions as to the appropriate time and place for Petitioner to receive social skills training; the IEP team took such suggestions, incorporating them into the finalized IEP. While the behavioral data failed to capture the stark contrast between Petitioner's behavior in the general education and ESE resource classrooms, it accurately captured that

Petitioner's behavior improved when surrounded by his nondisabled peers. Indeed, Petitioner's mother utilized this data in her argument against changing his placement. Therefore, although the data was flawed, it did not impede Petitioner's mother from meaningfully participating in the January 17 and 22, 2024, IEP meetings.

LRE

62. Petitioner next asserts that Petitioner's change in placement violated the IDEA's LRE mandate. That mandate provides, in relevant part:

> 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).

63. 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 Act, 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).

64. 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.

65. 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.

66. Applying these principles here, the greater weight of the evidence establishes that Petitioner's current placement is not his LRE. This conclusion is based on several key facts. First, it is undisputed that Petitioner's behavior in the general education classroom was less volatile than in his ESE resource classes. This is significant. Petitioner's general education classes have around three times the number of students as his ESE resource classes. He also has significantly less support. There are no interns, no ESE teachers, and one paraprofessional. Yet Petitioner's behavior in those classes was generally better than in his ESE classes. Petitioner engaged in better self-regulation, resulting in fewer disciplinary incidents. And, Ms. Hervol, Petitioner's only general education teacher who testified at the hearing, noted that when she utilized workbooks, consulted with School Board staff, and implemented behavior strategies, Petitioner's behavior improved. She also testified that Petitioner had never exhibited violence toward anyone while in her classroom. This demonstrates that Petitioner received significant benefits from observing his non-disabled peers.

67. Second, while the School Board relied heavily upon the behavioral data sheets in making its placement decision, that data does not accurately describe where Petitioner's problem behaviors occurred. This is most evident

in the classification of the December 6, 2023, incident as occurring within the general education setting. It did not. As Ms. Ayres testified, there were also several places in her data summaries where she provided no information about the setting in which the maladaptive behaviors were occurring. This is understandable, given that her role was to reduce Petitioner's target behaviors, regardless of the setting. However, the School Board should not have relied upon data that failed to pinpoint the location of Petitioner's problem behaviors to justify altering his placement.

68. Third, the evidence at hearing showed that Petitioner's worst behaviors occurred while in his ESE resource classes or in transition. It was during those times that Petitioner engaged in high magnitude behaviors, such as kicking, hitting, and scratching. Additionally, Petitioner's disciplinary records following his schedule change further this point. Since removal from almost all of his general education classes, Petitioner has been suspended from over a hundred classes because of violent and disruptive behavior.

69. As such, Petitioner has established that his current placement violates the LRE mandate and is a denial of FAPE.

Relief

70. Having found that the School Board violated the IDEA's LRE mandate, the next concern is the appropriate remedy. *See* 20 U.S.C. § 1415(i)(2)(C)(iii). In determining an appropriate remedy, the court, or administrative hearing officer, has broad discretion. *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 770 (6th Cir. 2001); *see also Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 244 n.11 (2009) (observing that 20 U.S.C. § 1415(i)(2)(C)(iii) authorizes courts and hearing officers to award appropriate relief, notwithstanding the provision's silence with regard to hearing officers).

71. Appropriate relief depends on equitable considerations, so that the ultimate award provides the educational benefits that likely would have accrued from special education services the school district should have

supplied in the first place. *Reid v. Dist. of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005).

72. Guided by these principles, the undersigned orders the following relief: within 20 days of this Final Order, the School Board shall remove each disciplinary infraction from Petitioner's record that occurred after January 22, 2024, that was found to be a manifestation of Petitioner's disabilities. The School Board must also, within 20 days of this Final Order, convene an IEP meeting to review Petitioner's current placement and initiate amendments to Petitioner's FBA and BIP as the IEP team deems appropriate to determine Petitioner's LRE. Finally, before the 2024-2025 school year commences, the School Board must retrain all staff working with Petitioner on the collection of behavioral data.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner established that the School Board violated the IDEA violating the LRE mandate, and the School Board is ORDERED to:

1. Within 20 days of this Final Order, remove each disciplinary infraction from Petitioner's record that occurred after January 22, 2024, that was found to be a manifestation of Petitioner's disabilities.

2. Within 20 days of this Final Order, convene an IEP meeting to review Petitioner's current placement and initiate amendments to Petitioner's FBA and BIP as the IEP team deems appropriate to determine Petitioner's LRE.

3. Before the 2024-2025 school year commences, retrain all staff working with Petitioner on the collection of behavioral data.

4. All other forms of relief are denied.

DONE AND ORDERED this 28th day of May, 2024, in Tallahassee, Leon County, Florida.

NICOLE D. SAUNDERS
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
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this 28th day of May, 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).