

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case Nos. 25-4846E
25-4861ERA

MIAMI-DADE COUNTY SCHOOL
BOARD,

Respondent.

_____ /

FINAL ORDER

The due process hearing was held on May 4 through 6, 2026, by Zoom conference. Administrative Law Judge (ALJ) Jessica E. Varn, with the Division of Administrative Hearings (DOAH), presided over the hearing.

APPEARANCES

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

For Respondent: Gabrielle L. Gonzalez, Esquire
 Miami-Dade County School Board
 1450 Northeast Second Avenue, Suite 430
 Miami, Florida 33132

STATEMENT OF THE ISSUES

Whether the School Board denied the student a free and appropriate public education (FAPE) by failing to find the student eligible for exceptional student education (ESE) services, in violation of its child find obligation.

Whether the School Board discriminated or retaliated against the student based on her disability.

PRELIMINARY STATEMENT

Petitioner filed a request for an Individuals with Disabilities Education Act (IDEA) due process hearing (IDEA Complaint) on September 4, 2025. Petitioner simultaneously filed a request for a Section 504¹ hearing (Section 504 Complaint) on the same day. The IDEA Complaint was assigned to ALJ Sara Marken, while the Section 504 Complaint was assigned to ALJ Nicole Saunders.

On September 11, 2025, the School Board filed a Notice of Insufficiency, Motion to Dismiss, and Response regarding the IDEA Complaint. Petitioner filed an Amended Due Process Complaint on September 12, 2025. On September 16, 2025, the School Board moved to consolidate the cases, which Petitioner objected to. ALJ Marken consolidated the cases on September 19, 2025. On the same day, Petitioner moved to disqualify ALJ Marken.

On September 23, 2025, ALJ Marken denied the request to disqualify her. On the same day, Petitioner filed a Renewed Motion to Disqualify ALJ Marken. On September 25, 2025, Petitioner filed a Motion for Leave to File Consolidated Due Process Complaint in the consolidated cases.

On September 26, 2025, ALJ Marken granted Petitioner's Motion to Disqualify ALJ. Both cases were transferred to the undersigned on September 26, 2025.

On October 1, 2025, a status conference was held, an Amended Case Management Order was entered, and a final hearing was scheduled for November 17 through 21, 2025. On October 6, 2025, the School Board filed a

¹ The Rehabilitation Act of 1973, 29 U.S.C. § 795, *et seq.* (Section 504).

Motion to Dismiss and Response to the Second Amended Complaint. On October 23, 2025, an Order Denying Motion to Dismiss was entered.

The parties then engaged in extensive discovery and motion practice, including multiple motion hearings, resulting in the entry of orders governing and addressing discovery disputes.

On November 7, 2025, Petitioner filed an 81-page Corrected Motion to Compel Production of Education Records and to Overrule Objections, along with a Motion to Continue Final Hearing Pending Discovery Resolution. As the undersigned could not rule on any discovery objections without a full hearing on the issue, the continuance was granted and the due process hearing scheduled for November 17 through 21, 2025, was canceled.

During the motion hearing on November 17, 2025, the due process hearing was rescheduled for February 2, 3, and 9 through 11, 2026.

Additional discovery and motion practice continued, including multiple orders related to subpoenas, production of documents, and requests for sanctions.

On December 15, 2025, Petitioner once again filed a Motion to Continue Final Hearing alleging that Petitioner could not prepare for the due process hearing because of an impending shoulder surgery. The School Board objected. A motion hearing was held on December 17, 2025; and the undersigned denied all of Petitioner's requests for relief.

On January 8, 2026, Petitioner renewed her Motion for Continuance of the final hearing alleging once again that she wanted to amend the Complaint. The School Board objected. Petitioner filed an Amended Due Process

Complaint on January 12, 2026. An Amended Case Management Order was issued on January 14, 2026.

On January 22, 2026, the School Board filed a Motion to Dismiss and Response to Second Amended Consolidated Complaint, and Petitioner filed a Response objecting. On January 29, 2026, the undersigned granted the Motion to Dismiss related to several statute of limitation claims and a requested independent educational evaluation. The due process hearing was reset for the third time for May 4 through 8, 2026.

The hearing was held on May 4 through 6, 2026. Petitioner presented the testimony of the student's [REDACTED]; [REDACTED], School Principal; [REDACTED], Assistant Principal; [REDACTED], School Counselor; [REDACTED], South Region Superintendent; [REDACTED], Director of ESE Compliance; and [REDACTED], [REDACTED] teacher. DOAH's Exhibit Portal and the Transcript memorialize the exhibits entered by Petitioner. The School Board opted not to present a defense.

The parties agreed to file proposed final orders within 30 days from the day the transcript was filed. The final order deadline was also extended to 30 days after the proposed final orders were filed. The Transcript was filed on July 20, 2026. Both parties filed timely Proposed Final Orders, which were considered in preparing this Final Order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, female pronouns will be utilized in this Final Order when referring to Petitioner. The female pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. At the time Petitioner filed the Complaint, in January [REDACTED], the student was a [REDACTED]-grade student at [REDACTED], a public school in Miami-Dade County.

2. In [REDACTED], while attending a Miami-Dade County school, the student was recommended and screened for gifted eligibility but did not qualify due to her Intelligence Quotient (IQ) score. Even so, she was still placed in a gifted classroom and did well academically.

3. From January [REDACTED] through June [REDACTED], the student attended school in [REDACTED] and received some counseling services for about two to three months.

4. While attending school in [REDACTED], no referrals were made for ESE services.

5. In September [REDACTED], the student returned to Miami-Dade and attended [REDACTED]. The school attempted to provide counseling because of some bullying and harassment allegations and minor incidents, however the parent declined to provide consent.

6. [REDACTED] also advised that a referral to another counselor, the school's mental health coordinator, could be facilitated, but again the parent declined to provide consent.

7. The bullying and harassment allegations related to one incident where a student used a racial slur, an incident where classmates got upset with the student for forfeiting a doughnut reward because of inappropriate behavior at lunch, an incident at lunch where a student was saving a seat and put their leg up in front of the student, and another incident where a student was spraying hand sanitizer in the air and some landed on the student.

8. Through at least December [REDACTED], the parent agreed that [REDACTED] too did not see any symptoms to warrant evaluation.

9. The student's [REDACTED] teacher, [REDACTED], who has taught [REDACTED] for [REDACTED] years, explained that these minor incidences were typical behaviors for [REDACTED], especially in a friend group of three [REDACTED].

10. [REDACTED] also recalled that the student would sometimes be flustered and anxious in the morning because she was often arriving late to school, including on testing days. Her mood would improve in the afternoon.

11. [REDACTED] also believed that the student's behaviors were similar to that of her same age peers. [REDACTED] saw no academic, behavioral, or social concerns that were unusual, or any symptoms of Attention-Deficit/Hyperactivity Disorder (ADHD). Also, the student had no documented disciplinary history.

12. The student's [REDACTED] seemed to agree, and told [REDACTED] that [REDACTED] did not want the student evaluated for ESE services.

13. In May [REDACTED], and before the conclusion of the [REDACTED] school year, the student was withdrawn from [REDACTED] and enrolled in home education.

14. On June 18, [REDACTED], the student's [REDACTED] attended a School Board meeting and made comments during the public comment portion.

15. School Board policy requires certain decorum at public meetings. Yelling, screaming, being disrespectful, and using profane or vulgar language is not acceptable and can justify removal. [REDACTED] began to yell into the microphone, so [REDACTED] was asked to step away from the podium, and when [REDACTED] did not do so, [REDACTED] was removed from the podium. Video evidence of the event shows that the student's [REDACTED] began to scream and used foul language.

16. In August [REDACTED], the student was re-enrolled at a different Miami-Dade County school where she excelled socially and academically.

17. Also in August [REDACTED], the School Board requested consent to evaluate the student for ESE eligibility, based on the [REDACTED] request. However, the student's [REDACTED] did not provide consent.

18. In April [REDACTED], the student's [REDACTED] changed [REDACTED] mind and provided consent for an evaluation. The evaluation was not yet completed by the time of the due process hearing.

CONCLUSIONS OF LAW

19. 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).

20. The burden of proof is on Petitioner, to prove the claim by a preponderance of the evidence. *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).

21. 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).

22. In enacting the IDEA, Congress intended to address inadequate educational services offered to children with disabilities and 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).

23. The School Board, a local educational agency under 20 U.S.C. § 1401(19)(A), receives federal IDEA funds and thus must comply with certain provisions of that Act. *See* 20 U.S.C. § 1401, *et seq.*

24. 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).

25. The first and, arguably, most important procedural obligation, logically, is to identify and evaluate students for IDEA eligibility, most often referred to as the School Board's ongoing child find obligation. Child find "refers to a school's obligation, under relevant federal law, to identify students with disabilities who require accommodations or special education services proactively rather than waiting around for a child's parents to confront them with evidence of this need." *Culley v. Cumberland Valley Sch. Dist.*, 758 Fed. Appx. 301, 306 (3d Cir. 2018).

26. The IDEA sets forth the child find obligation as follows:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).

27. In compliance with the child find mandate, rule 6A-6.0331 sets forth a school district's ongoing responsibilities related to students suspected of having a disability. This rule requires school districts to ensure that students suspected of having a disability are subject to general education intervention procedures. They must identify, locate, and evaluate all students with

disabilities who need ESE and make FAPE available if the student meets the eligibility criteria.

28. As an initial matter, the school district has the “responsibility to develop and implement a [multi-tiered system of support, or RTI], which integrates a continuum of academic and behavioral interventions for students who need additional support to succeed in the general education environment.” Fla. Admin. Code R. 6A-6.0331(1).

29. The general education intervention requirements include parental involvement, observations of the student, review of existing data, vision and hearing screenings, and evidence-based interventions. Fla. Admin. Code R. 6A-6.0331(1)(a)-(e). Rule 6A-6.0331(1)(f) cautions, however, that nothing in this section should be construed to either limit or create a right to FAPE or to delay appropriate evaluations of a student suspected of having a disability.

30. In *J.N. v. Jefferson County Board of Education*, 12 F.4th 1355 (11th Cir. 2021), the eleventh circuit clarified the child find obligation, explaining that a parent must, after establishing a child find violation, also put forth evidence that the student was owed ESE services for the time that lapsed before finally receiving ESE services. (“So to succeed in her claim, Molly’s mother needs to show more than a child-find violation. She needs to show that Molly’s education ‘would have been different but for the procedural violation.’”) *Id.* at 1366, *quoting Leggett v. Dist. of Columbia*, 793 F.3d 59, 68 (D.C. Cir. 2015).

31. Here, Petitioner failed to present any evidence establishing that the student had a disability that required accommodations or ESE services, or that the student’s education would have been different but for the alleged child find violation. Although the student had some minor social disagreements with peers, the more persuasive evidence showed that her interactions and attention levels were age appropriate compared with her peers. Also, the student’s [REDACTED] refused to provide consent to evaluate until one month before the due process hearing.

32. Additionally, all attempts by the School Board including proposed counseling, parent meetings, and collaborative resolution related to the bullying concerns were refused by the student's [REDACTED]. [REDACTED] simply refused to interact or cooperate with the School Board. Thus, Petitioner's claim fails.

33. Next, Petitioner asserts that the School Board discriminated and retaliated against her based on her disability, in violation of Section 504. To establish a prima facie case under Section 504, Petitioner must prove that she: (1) had an actual or perceived disability; (2) qualified for participation in the subject program; (3) was discriminated against only because of her disability; and (4) the relevant program is receiving federal financial assistance. *Moore v. Chilton Cnty. Bd. of Educ.*, 936 F. Supp. 2d 1300, 1313 (M.D. Ala. 2013) (*citing L.M.P. v. Sch. Bd. of Broward Cnty.*, 516 F. Supp. 2d 1294, 1301 (S.D. Fla. 2007)); *see also J.P.M. v. Palm Beach Cnty. Sch. Bd.*, 916 F. Supp. 2d 1314, 1320 (S.D. Fla. 2013).

34. This claim fails outright as there was no evidence that at the time of filing the student had an actual or perceived disability.

35. Next, Petitioner appears to base her Section 504 claim on allegations that the student's [REDACTED] was retaliated against for advocating at a School Board Meeting. However, the video footage shows that the student's [REDACTED] was simply asked to follow School Board policy related to decorum when speaking at a public meeting and failed to do so. Thus, this claim also fails.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy her burden of proof. The Complaint is dismissed and all requests for relief are DENIED.

DONE AND ORDERED this 16th day of September, 2026, in Tallahassee,
Leon County, Florida.

~~Case No. 25-4846E~~

JESSICA E. VARN
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of September, 2026.

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).