

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

\*\*,

Petitioner,

vs.

Case No. 26-2258EDM

OSCEOLA COUNTY SCHOOL  
BOARD,

Respondent.

\_\_\_\_\_ /

**FINAL ORDER**

This case came before Administrative Law Judge (ALJ) Sara Marken of the Division of Administrative Hearings (DOAH) for an expedited due process hearing held by Zoom conference on July 9, 2026.

**APPEARANCES**

For Petitioner:     Mark Saul Germain, Esquire  
                             Germain Legal  
                             45 South Atlantic Highway  
                             Cocoa Beach, Florida 32931

For Respondent:     Amy J. Pitsch, Esquire  
                             Sniffen & Harmon, P.A.  
                             123 North Monroe Street  
                             Tallahassee, Florida 32301

**STATEMENT OF THE ISSUES**

Whether the conduct that resulted in discipline is a manifestation of the student's disability; and

Whether the School Board failed to consider the use of positive behavior interventions and supports, and other strategies, to address behavior that impedes the student's learning or that of others.

### PRELIMINARY STATEMENT

Petitioner filed a request for an expedited due process hearing (Complaint) on April 30, 2026. The School Board forwarded the Complaint to DOAH on May 1, 2026. The parties held a resolution session on May 6, 2026, but did not resolve the dispute. On May 7, 2026, the School Board filed a Notice of Resolution Outcome and District Availability for Hearing, identifying August 10, 2026, as the twentieth school day following the filing of the Complaint. On May 14, 2026, Petitioner filed a Motion to Designate [REDACTED] as Qualified Representative for Virtual Proceedings (Motion to Designate). The undersigned issued an Order Denying Qualified Representative on May 18, 2026. On the same day, the undersigned held a telephonic pre-hearing conference, during which the parties agreed to schedule the final hearing on June 29 and 30, 2026.

On May 21, 2026, Petitioner filed an Amended Motion to Designate Qualified Representative (Amended Motion to Designate), and on May 27, 2026, the undersigned entered an Order Accepting Qualified Representative. On the same day, the School Board filed a Motion to Reschedule Hearing (Motion to Reschedule), and Petitioner filed a Motion in Opposition to Respondent's Request to Delay the Expedited Hearing and Motion to Compel Live Testimony (Motion in Opposition). On June 3, 2026, Respondent filed a Response to the Motion in Opposition and the undersigned issued a Notice of Motion Hearing for June 15, 2026. Respondent sought to reschedule the final hearing because a witness would not be available. At the motion hearing, Respondent advised that it could proceed without the witness and withdrew

its request for a continuance. Petitioner, however, maintained that the witness's testimony was necessary and requested that the undersigned reschedule the final hearing. Petitioner also had recently retained counsel, who required additional time to prepare for the final hearing. On June 16, 2026, the undersigned issued an Order Rescheduling Hearing by Zoom Conference for July 9 and 10, 2026.

On June 23, 2026, [REDACTED] filed a Notice of Appearance on Petitioner's behalf. On July 2, 2026, Petitioner filed a Motion to Compel Discovery. The undersigned held a motion hearing on July 8, 2026, and denied the Motion to Compel Discovery.

The final hearing proceeded as scheduled. Petitioner presented the testimony of [REDACTED], teacher; [REDACTED], teacher; [REDACTED], School Resource Compliance Specialist; [REDACTED], a student; Petitioner's parents; and Petitioner's grandparent. Petitioner's Exhibits 001A and 001D were admitted. The School Board presented the testimony of [REDACTED], Resource Compliance Specialist; [REDACTED], teacher; [REDACTED], teacher; [REDACTED], Manifestation Determination Review Specialist; and [REDACTED], School Resource Officer. The School Board's Exhibits A through E, G, H, and J were admitted.

At the conclusion of the due process hearing, the parties agreed to file proposed final orders no later than August 14, 2026, and this Final Order is due by August 21, 2026. The parties timely filed proposed final orders, which the undersigned considered when drafting this Final Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time Respondent performed the evaluations at issue. For stylistic convenience, the undersigned will use male pronouns in this

Final Order 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. The student is an [REDACTED]-grade student who is eligible for exceptional student education (ESE) under the category of Other Health Impaired (OHI). The student has a medical diagnosis of Attention-Deficit/Hyperactivity Disorder (ADHD).

2. The student lived in [REDACTED] with his [REDACTED] when he was in the [REDACTED] grade. While in [REDACTED], the student was found eligible for ESE.

3. The student began his [REDACTED]-grade year in Osceola County, Florida, at [REDACTED]. During that school year, the student received approximately [REDACTED] disciplinary referrals for infractions including vandalism, horseplay, cheating, disruptive behavior, other offense/misconduct, insubordination/open defiance, false and/or misleading information, and unauthorized absence from school or class. Consequences for these behaviors ranged from a verbal reprimand and loss of lunch privileges to suspension from school. The following paragraphs describe several incidents that resulted in disciplinary referrals.

Student pulled out his phone in the bathroom and stuck it over the stall and video[ed] two students who were play-fighting. He then sent the video to another student.

\* \* \*

I received a call from [REDACTED] substitute that this student was back talking and cussing at [REDACTED] during class. He stated he didn't care and would not apologize because he didn't want to.

\* \* \*

Student was called down to the Dean's office but did not show up.

\* \* \*

Was told to move back to his assigned seat. He argued with me. I told him to move back again, and he did not. He eventually made it back to his assigned seat but then started to eat. I have addressed this multiple times as this expectation is written on the board, and I have discussed it at the beginning of class[.]

\* \* \*

[\*\*] was seen throwing things at another table where a student got agitated and threw things back at the table. [\*\*] continued to throw things at the table, and this student. The student also continued to throw things back at [\*\*]'s table. [\*\*] then threw things with great force at the student multiple times. At this time, the student got up and went to [\*\*]'s table. He then threw something at [REDACTED] again, and they exchanged items. The student then walked around the table and pushed [\*\*][.]

4. On April 11, [REDACTED], the School convened the student's annual individualized education plan (IEP) meeting. The IEP provided the student with support facilitation in math and reading skills in the general education classroom. The IEP included two goals related to social-emotional behavior. Both goals addressed the student's self-advocacy skills and his ability to remain focused and complete assignments. The IEP identified no other behavioral concerns.

5. During the [REDACTED] school year, while in the [REDACTED] grade, the student received [REDACTED] disciplinary referrals, including the referral at issue in this case. The referrals involved infractions similar to those from the previous school year, including disruptive behavior, defiance/insubordination, horseplay, unauthorized absence from school or class, and other offense/misconduct. As

consequences, the student lost lunch privileges and received out-of-school suspensions.

6. Despite the student's continued maladaptive behaviors, the IEP team did not convene to address them. On March 10, [REDACTED], the IEP team convened for the student's annual IEP meeting. The March [REDACTED] IEP provided the same services as the April [REDACTED] IEP. Although the team changed the student's academic goals, it did not change his social-emotional goals.

7. On April 3, [REDACTED], the student's [REDACTED] texted the student during the last class period of the day regarding an incident in the hallway with another [REDACTED] student. The student's [REDACTED] told the student that a [REDACTED] student had approached [REDACTED], attempted to grab [REDACTED] inappropriately, and called [REDACTED] a derogatory name. After the class ended, the student approached the other [REDACTED] student in the hallway. The two students engaged in a verbal altercation, during which the student suggested that they fight off campus, while the other [REDACTED] student suggested that they fight in the bathroom. A physical altercation followed. The evidence conflicts as to which student struck first. The evidence establishes, however, that multiple staff members intervened to stop the altercation and that one staff member sustained an injury during the intervention.

8. The evidence also conflicts as to the amount of time that elapsed between the text message and the confrontation. The student's [REDACTED] testified that [REDACTED] sent the text near the end of the school day, after returning from the restroom. Although [REDACTED] did not recall how much time remained in the class period, [REDACTED] explained that at least ten minutes must have remained because the school does not allow students to use the restroom during the final ten minutes of class.

9. As a result of the incident, the school determined that the student committed a Level 4 infraction for Other Major Offense and recommended that the student attend the School Board's alternative school,

[REDACTED].

10. On April 23, [REDACTED], the school convened a manifestation determination review (MDR) meeting. The team participants included the student's parents; [REDACTED], a general education teacher; [REDACTED], ESE teacher; [REDACTED], the MDR Specialist; [REDACTED], Assistant Principal; [REDACTED], Dean; and two representatives from the alternative school.

11. [REDACTED] facilitated the meeting and served as the local educational agency (LEA) representative. [REDACTED] role during the meeting was to lead the team through a review of relevant student data, record the information considered, and guide the team in determining whether the student's conduct was a manifestation of the student's disability. [REDACTED] did not know the student before the meeting. Because a school psychologist did not participate in the meeting, [REDACTED] provided the team with information regarding the general characteristics of ADHD, as described in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. At the final hearing, [REDACTED] summarized the meeting as follows:

Q: Can you summarize what the team's discussion was as far as whether the student's disability was directly and substantially related to the behavior for which he was being disciplined?

A: The conversation was focused around what his ADHD looked like in the classroom or in a school setting. And the discussion was more along the lines of, this is a student who is not engaging in their academic work, which is where their self-advocacy goals or their social-emotional help was in. He does not -- did not have a behavior intervention plan. Fighting was an outlier for this student, which is where the team really drew from the IEP information, the data that for discipline history, which is how they -- they concluded this wasn't an impulsive act. It was something that, you know -- it didn't go along the lines of something that he was being supported for via IEP.

12. The team limited its review to the documents included in the MDR packet, although it did not necessarily discuss each document in detail. The MDR documentation identified the student's disability as "Other Health Impairment: ADHD" and described him as "easily distracted, not focused, fidgety in class" and "not medicated."

13. The MDR documentation also included a section addressing the student's behavioral history, including the effectiveness of previous interventions, any history of the behavior subject to disciplinary action, behaviors addressed in the IEP, and any changes in the student's behavior. In this section, the team noted only that the student did not have a behavior intervention plan and briefly listed his prior disciplinary referrals.

14. At the conclusion of the MDR, the school-based team determined that the student's disability did not cause, or have a direct and substantial relationship to, the conduct at issue. In reaching this determination, the team placed significant weight on the fact that the student had no prior disciplinary incidents involving fighting. However, the team did not meaningfully consider the student's history of significant maladaptive behaviors, including defiance, serious disruptions to the school environment, and aggressive conduct. The team also determined that the conduct did not directly result from the school's failure to implement the student's IEP. The student's parents disagreed with the team's determination.

15. The better evidence establishes that the school failed to address the student's behavioral needs through his IEP adequately. The better evidence further establishes that the conduct that resulted in the disciplinary action had a direct and substantial relationship to the student's ADHD. Accordingly, the student's conduct was a manifestation of his disability.

#### CONCLUSIONS OF LAW

16. DOAH has jurisdiction over the subject matter of this proceeding and the parties. *See* § 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03312(7).

17. Petitioner bears the burden of proof with respect to the issues raised in this matter. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

18. In enacting the Individuals with Disabilities Education Act (IDEA), Congress sought to “ensure that all children with disabilities have available to them a free appropriate public education that emphasized 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. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public-school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which depends on each agency’s compliance with the IDEA’s procedural and substantive requirements. *Doe v. Ala. State Dep’t of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

19. Parents and children with disabilities are given substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. *See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents have a right to 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 “with respect to any matter relating to the identification, evaluation, or educational placement of [their] child, or the provision of a free appropriate public education [FAPE] to such child.” 20 U.S.C. § 1415(b)(1), (b)(3), and (b)(6).

20. School districts face certain limitations on their ability to remove disabled children from their educational placements following a behavioral transgression. The IDEA provides that when a school district intends to place

a child with a disability in an alternative educational setting for a period of more than ten school days, it must first determine that the child's behavior was not a manifestation of his disability. 20 U.S.C. § 1415(k)(1)(C). Under the IDEA's implementing regulations, "[o]n the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the local education authority (LEA) must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504." 34 C.F.R. § 300.530(h).

21. The necessary inquiry is outlined in 34 C.F.R. § 300.530(e):

Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must 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 LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

22. Generally, if the conduct is deemed a manifestation of the child's disability, the student must be returned to the educational placement from which the student was removed. 34 C.F.R. § 300.530(f)(1). Additionally, if a behavior intervention plan (BIP) was not in place at the time of the misconduct, the school district must conduct a functional behavior assessment (FBA) and implement a BIP for the student. *Id.*

23. If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the school district may apply the relevant disciplinary procedures in the same manner and duration as would be applied to children without disabilities. 34 C.F.R. § 300.530(c).

24. The preponderance of the evidence establishes that the student's conduct had a direct and substantial relationship to his ADHD. The student's behavioral history reflects a persistent pattern of maladaptive behaviors that extended beyond difficulty remaining focused, completing assignments, or engaging in classroom instruction. Over two school years, the student repeatedly engaged in significant disruptive behavior, defiance and insubordination, horseplay, and other misconduct that resulted in numerous disciplinary referrals and, at times, suspension from school. Thus, the student's behavioral history demonstrates that his difficulties at school were not limited to the inattentiveness and lack of focus identified in his IEP.

25. Turning to the second issue, Petitioner alleges that the School Board failed to address the student's behavioral needs in his IEPs adequately. The IDEA provides that, "[i]n the case of a child whose behavior impedes the child's learning or that of others, [the IEP team must] consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 34 C.F.R. § 300.324.

26. The record establishes that the student persistently engaged in maladaptive behaviors that interfered with his learning and the learning

of others. Despite these ongoing behavioral concerns, the IEP team addressed only the student's ability to remain on task and provided no services or supports to address his broader behavioral needs. Moreover, the IEP team maintained the same social-emotional goals from [REDACTED] grade through [REDACTED] grade, despite the student's continued pattern of significant behavioral concerns.

27. Because the student's conduct was a manifestation of his disability, the School Board must return the student to the educational placement from which he was removed. Additionally, it must conduct an FBA and implement a BIP.

28. As a result of the School Board's failure to address the student's behavioral needs in his IEP, the student is entitled to an appropriate remedy under the IDEA. In that regard, if a district court or administrative hearing officer determines that a school district has violated the IDEA by denying that student FAPE, then the court shall "grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii). In so doing, the court or administrative hearing officer has broad discretion. *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, despite the provision's silence in relation to hearing officers).

29. Such "appropriate" relief may include reimbursing parents for the cost of private replacement therapy; transportation expenses; credit card transaction fees and interest; and, for times when a trained service provider is unavailable, reimbursement for the time a parent spent in providing therapy personally. *See Bucks Cnty. Dep't of Mental Health v. Pa.*, 379 F.3d 61, 63 (3d Cir. 2004) ("[W]e hold that under the particular circumstances of this case, where a trained service provider was not available and the parent stepped in to learn and performed the duties of a trained service provider,

reimbursing the parent for her time spent in providing therapy is ‘appropriate’ relief”); *D.C. ex rel. E.B. v. N.Y.C. Dep’t of Educ.*, 950 F. Supp. 2d 494, 516 (S.D.N.Y. 2013) (awarding reimbursement for transportation costs); *JP v. Cnty. Sch. Bd.*, 641 F. Supp. 2d 499, 506-07 (E.D. Va. 2009) (awarding parents a reasonable rate of interest to compensate them for tuition payments made on their credit cards, as well as credit card processing fees). Appropriate relief also 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).

30. In addition, one type of relief that a court may provide is an award of compensatory education. *Sch. Comm. of Town of Burlington v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 369 (1985) (quoting 20 U.S.C. § 1415(e)(2)). Compensatory education is an award “that simply reimburses a parent for the cost of obtaining educational services that ought to have been provided free.”) *Hall v. Knott Cnty. Bd. of Educ.*, 941 F.2d 402, 407 (6th Cir. 1991); see also *Draper v. Atlanta Indep. Sch. Sys.*, 480 F. Supp. 2d 1331, 1352-53 (N.D. Ga. 2007) (holding that, in formulating a compensatory education award, “the Court must consider all relevant factors and use a flexible approach to address the individual child’s needs with a qualitative, rather than quantitative focus”), *aff’d*, 518 F.3d 1275 (11th Cir. 2008).

31. Guided by the above-stated principles, Petitioner is entitled to compensatory behavioral services designed specifically to address his behavioral needs, including counseling, an FBA, and a BIP developed by behavioral experts.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the student’s conduct was a manifestation of his disability

and that Respondent failed to address the student's behavioral needs in his IEP adequately. Accordingly, Respondent is

ORDERED to:

1. Return the student to his previous educational placement;
2. Within 60 days, conduct an FBA;
3. Create and implement a BIP to address the student's maladaptive behaviors; and
4. The IEP team must reconvene and amend the student's IEP to address the student's behavioral needs and determine the appropriate behavioral services and supports.
5. All other forms of relief are DENIED.

DONE AND ORDERED this 19th day of August, 2026, in Miami, Dade County, Florida.

  
Case No. 26-2258EDM

---

SARA M. MARKEN  
Administrative Law Judge  
DOAH Miami Office

Division of Administrative Hearings  
2001 Drayton Drive  
Tallahassee, Florida 32311  
(850) 488-9675

[www.doah.state.fl.us](http://www.doah.state.fl.us)  
Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of August, 2026.

COPIES FURNISHED:

Michael Barrett, General Counsel  
(eServed)

Amy J. Pitsch, Esquire  
(eServed)

Bryce D. Milton, Educational Program Director  
(eServed)

Mark Saul Germain, Esquire  
(eServed)

Dr. Mark Shanoff, 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).