

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case No. 26-2400EDM

BROWARD 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 August 11 and 12, 2026.

APPEARANCES

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

For Respondent: Giseli F. LeMay, Esquire
 Kristen Miriam Calzadilla, Esquire
 School Board of Broward County, Florida
 K.C. Wright Administration Building
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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 materially implement the student's individualized education plan (IEP); and

What remedy, if any, is appropriate?

PRELIMINARY STATEMENT

Petitioner filed a request for an expedited due process hearing (Complaint) on May 4, 2026. Broward County School Board ("School Board") forwarded the Complaint to DOAH on May 12, 2026. The parties held a resolution session on June 10, 2026, but did not resolve the dispute. On July 15, 2026, the undersigned held a telephonic pre-hearing conference. During the conference, Respondent indicated that the 20th school day was August 13, 2026, and parties agreed to schedule the final hearing on August 11 and 12, 2026. On July 31, 2026, Petitioner filed a Motion to Recognize [REDACTED] as a Qualified Representative (QR Motion). The undersigned issued an Order Denying Qualified Representative on August 4, 2026.

The final hearing proceeded as scheduled. At the conclusion of the due process hearing, the parties agreed to file proposed final orders no later than August 21, 2026, making this Final Order due by August 26, 2026. The parties timely filed proposed final orders, which the undersigned considered when drafting this Final Order.

The identity of witnesses and the exhibits entered into the record are memorialized in the hearing Transcript. 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. Petitioner is a [REDACTED] 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's IEP was not admitted into evidence. The testimony established that he receives instruction in a general education setting, with support facilitation in some other classes. The student also receives instruction from an ESE teacher in one class to develop independent functioning skills.

3. The student's IEP includes a behavior intervention plan (BIP). The school developed the BIP on September 9, [REDACTED], during the student's [REDACTED] year, and last updated it on September 18, [REDACTED]. The BIP identifies the student's social and educational goals as "improved academic performance, increased participation in class, and improved management of social interactions with peers and adults in a positive manner."

4. The BIP requires the ESE Support Facilitator to monitor the student's progress weekly. The BIP identifies the target behavior as "noncompliance defined as he will rest his head on his desk, check his phone, or is seated at his desk not working[.] He tends to engage in excessive unrelated talking. Verbally threatening peers and adults." As part of that monitoring, teachers must complete data-collection tools.

5. While in high school, but before the events at issue in this proceeding, the parent raised concerns regarding missed IEP services. The School Board addressed those concerns and provided compensatory services.

6. In March of [REDACTED], the parents of two students contacted school administration and requested to initiate a bullying investigation involving the student and his [REDACTED]. [REDACTED], the assistant principal, investigated the allegations.

7. The incidents involving the two alleged victims began as early as January 18, [REDACTED], and included inappropriate and threatening text messages and social media posts, as well as the taking of property. The school conducted two mediations, but the conflicts continued. The alleged victims were younger than the student and his [REDACTED], and the conduct significantly affected both of them. In particular, the student and his [REDACTED] enlisted other peers to alienate one of the alleged victims. The other alleged victim missed more than a month of school and did not return until the student and his [REDACTED] no longer attended the school.

8. After completing the investigations of the student and his [REDACTED], the school, as required, forwarded the results to the district office for review. [REDACTED], the School Board's assistant director for SESIR discipline and bullying liaison, reviewed the report of the investigations. School Board policy defines bullying as conduct that is repeated and intentional and involves a power imbalance between the students. [REDACTED] explained the School Board's conclusions as follows:

And in this case, what we found is that it was happening to two students that were known to each other. So we applied that as across the board for the repeated and establishing pattern of behavior. The intentional, what we saw was, even though there had been -- the school was doing interventions, they were meeting with parents. They were meeting with students. They were putting things in place, telling the [REDACTED] -- all the [REDACTED] to stay away from each other. That was being ignored, and there continued to be the interaction, whether it was through a cell phone, calling people "snitches," telling people not to be friends with certain kids.

And then the power imbalance was, number one, we looked at the fact that the two [REDACTED] that were stating that they were being bullied, they are new to the school. They're [REDACTED] graders this past year. The other two boys were [REDACTED] graders. So we took a look at the age difference. We took a look at, you know, the

friendship, the power level, that dynamic within the school. And once we took all of that into consideration and the fact that the behavior was not stopping, no matter what the school seemed to do for the interventions, that's when the committee determined that we agreed that it substantiated bullying.

There were also some threats and some statements that were made regarding witnesses being told that they were not to be associated with one particular target victim. That they were not to be his friend. If they were his friend, you know, it would not go well for them.

9. On April 8, [REDACTED], as a result of the investigations, the School Board assigned the student and his [REDACTED] to an alternative educational setting.

10. As required, the school held a manifestation determination review (MDR) meeting. The student's parent and [REDACTED] advocate attended virtually. [REDACTED], the school psychologist; [REDACTED], the student's English-language arts teacher; [REDACTED], the assistant principal; and [REDACTED], the school's ESE specialist, also attended. [REDACTED] served as the local educational agency (LEA) representative.

Parent participation

11. The MDR meeting followed a specific agenda. Frequent interruptions and multiple participants speaking simultaneously made it difficult to follow the agenda. The parent became upset, and the meeting became chaotic. The parent and [REDACTED] advocate repeatedly questioned school staff and interrupted their responses. [REDACTED] described the meeting as follows:

Q: And can you briefly describe what happened at the MDR meeting?

A: So, their -- the [REDACTED], [**], and [REDACTED] supporter were there to determine if we had done our due diligence in documenting their IEPs and making sure that we were doing what we were legally

supposed to, and making sure that their kids were supported.

However, in practice, we were bombarded with multiple questions, back to back to back, with no space to answer in between them.

At one point the, uh – [**] supporter was simply repeating the same question over and over and over and over again, almost yelling it, as the administrators were attempting to answer that question.

Because [REDACTED] was so persistent in that singular question and its repetition and its volume, our team was not given an opportunity to actually have that answer heard. We couldn't get the answers out, in the space where [REDACTED] would stop talking, because there was no space where [REDACTED] was not talking.

12. Despite the parent's active and vocal participation throughout the MDR meeting, [REDACTED] did not participate in the ultimate determination of whether the student's conduct constituted a manifestation of his disability. [REDACTED], the LEA, explained that the School Board did not consider the parent a voting member of the MDR team and that School Board personnel alone voted on the manifestation determination.

Document and data review

13. While the MDR team reviewed information concerning the student's disciplinary and referral history, the record established that the team did not meaningfully review the behavioral data required by the student's BIP. The BIP required the support facilitation teacher to verify weekly that teachers collected data on the student's targeted behaviors through data-collection tools, including frequency charts and ABC duration forms.

14. The evidence concerning how teachers maintained that behavioral data requires some clarification. The better evidence established that teachers documented some of the student's targeted behaviors in other

records, including disciplinary referrals, notes, and emails to the parent, rather than contemporaneously recording all of the information on the frequency charts contemplated by the BIP. The information was later transferred from those records to frequency charts to provide a more complete picture of the frequency of the student's targeted behaviors.

15. Thus, although information concerning some of the student's behaviors existed in various records, the MDR team did not review the compiled frequency charts or otherwise meaningfully consider the BIP data as part of its manifestation determination.

Disability-Related Analysis

16. Before determining whether the conduct at issue constituted a manifestation of the student's disability, the team had to consider how ADHD manifested in this student. [REDACTED] directed all questions regarding this issue to [REDACTED], the school psychologist. The evidence showed that no other team member discussed how ADHD specifically manifested in this student during the meeting, despite the team including individuals who worked directly with and taught the student.

17. [REDACTED] had never evaluated, taught, or otherwise worked directly with the student. Before the MDR meeting, [REDACTED] reviewed the student's prior psychological evaluations and relied on those evaluations to prepare to discuss characteristics generally associated with ADHD.

18. When [REDACTED] attempted to explain those characteristics during the meeting, the parent's advocate interrupted [REDACTED], and [REDACTED] did not complete [REDACTED] explanation. As a result, the team did not complete the discussion concerning the characteristics of the student's disability and their relationship to the conduct at issue.

19. The school-based team ultimately determined that the student's conduct was not caused by, or had a direct and substantial relationship to, the child's disability; nor was it a direct result of the School Board's failure to implement the IEP.

20. Based on the foregoing, the School Board failed to comply with the procedural requirements governing the MDR. Specifically, the MDR team failed to include the parent as a member of the team making the manifestation determination; failed to review all relevant information concerning the student's behavior, including the behavioral data required by his BIP; and, most significantly, failed to conduct a student-specific analysis of the relationship between the student's disability and the conduct at issue.

CONCLUSIONS OF LAW

21. 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).

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

23. 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).

24. 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).

25. 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).

26. 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.

27. The MDR process required the team to review the relevant information available concerning the student, including the behavioral data collected pursuant to his BIP, in the context of the conduct that prompted the disciplinary action. More importantly, the process required the team to engage collectively in a student-specific discussion of how the student's disability manifested and whether a relationship existed between those manifestations and the conduct at issue. Because of the parent and advocate's repeated interruptions and objections at the MDR meeting, coupled with the LEA's limitations on the scope of the discussion, the team failed to meaningfully address the central issues required for the manifestation determination.

28. Given these procedural deficiencies, the undersigned cannot determine whether the MDR team reached an appropriate manifestation determination. A properly conducted MDR will provide the team an opportunity to address these deficiencies and make a manifestation determination based on the required review and analysis. Accordingly, the School Board shall conduct a new MDR meeting.

29. As to the implementation of the IEP, Petitioner alleges that the School Board failed to implement the student's IEP, including the BIP.

30. In *L.J. v. School Board*, 927 F.3d 1203 (11th Cir. 2019), the Eleventh Circuit Court of Appeals confronted, for the first time, the standard for claimants to prevail in a "failure-to-implement case." The court concluded that "a material deviation from the plan violates the [IDEA]." *L.J.*, 927 F.3d at 1206. The *L.J.* court expanded upon this conclusion as follows:

Confronting this issue for the first time ourselves, we concluded that to prevail in a failure-to-implement case, a plaintiff must demonstrate that the school has materially failed to implement a child's IEP. And to do that, the plaintiff must prove more than a minor or technical gap between the plan and reality; de minimis shortfalls are not enough. A material implementation failure occurs only when a school has failed to implement substantial or significant provisions of a child's IEP.

Id. at 1211.

31. Guided by these principles, the record established that the student's teachers maintained anecdotal information regarding his maladaptive behaviors. The evidence further establishes that the student's support facilitation teacher failed to monitor the behavioral data weekly as required by the BIP. However, the record contains insufficient evidence to establish that this implementation failure was material under the *L.J.* analysis. Accordingly, Petitioner is not entitled to relief on this issue.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board failed to follow MDR meeting procedures in violation of the IDEA. Accordingly, Respondent is ORDERED to convene an MDR meeting within ten school days.

DONE AND ORDERED this 25th day of August, 2026, in Miami, Dade County, Florida.


Case No. 26-2400EDM

SARA M. MARKEN
Administrative Law Judge
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Filed with the Clerk of the
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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).