

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

Case No. 26-3944EDM

vs.

POLK COUNTY SCHOOL BOARD,

Respondent.

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FINAL ORDER

An expedited due process hearing was held on September 8, 2026, before Jessica E. Varn, an administrative law judge (ALJ) with the Division of Administrative Hearings (DOAH). The due process hearing was held, by agreement of the parties, via Zoom conference.

APPEARANCES

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

For Respondent: Molly Lauren Shaddock, Esquire
 Sniffen & Harmon, P.A.
 605 North Olive Avenue, Second Floor
 West Palm Beach, Florida 33401

STATEMENT OF THE ISSUE

Whether the School Board failed to conduct a manifestation determination review (MDR) after a disciplinary change in placement.

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on August 10, 2026. The Complaint raised one expedited issue, as well as procedural and substantive issues about a free and appropriate public education (FAPE) that are not expedited. The School Board forwarded the Complaint to DOAH on August 12, 2026. The case was assigned to ALJ Sara M. Marken.

On August 27, 2026, a pre-hearing conference was held, and the parties agreed to hold the expedited hearing on September 8, 2026. ALJ Marken bifurcated the case and issued an Amended Case Management Order, reminding the parties of the deadlines associated with the non-expedited issues raised in the Complaint. On August 28, 2026, the case was transferred to the undersigned.

At the expedited hearing, Petitioner's [REDACTED] testified on behalf of [REDACTED] son and offered the testimony of [REDACTED], a special education advocate. The School Board presented the testimony of [REDACTED], Exceptional Student Education (ESE) Senior Manager, and [REDACTED], a Varying Exceptionalities teacher. Petitioner's Exhibits 1 through 3, 5, 8A, and 8B were admitted. School Board Exhibits A through C, E through H, L through P, Q, and T were admitted.

At the end of the hearing, the parties were invited to file proposed final orders by September 15, 2026. The final order deadline for this Final Order, which is ten school days after the hearing, is September 22, 2026. Both parties filed proposed final orders, which were considered during the drafting of this Final Order. This Final Order was prepared without the benefit of a transcript.

All references to statutory or regulatory provisions are to the provisions in effect during the relevant time period of this case, when the Complaint was filed. 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 a [REDACTED] who is eligible for ESE under the category of Autism Spectrum Disorder (ASD), and he is speech and language impaired and gifted. He is also diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD).

2. The student exhibits several maladaptive behaviors that surface regularly while at school. The behaviors include hitting, punching, shoving, kicking, and head-butting his peers and the adults at school; destroying items; using profanity; screaming and yelling inappropriately; throwing items at his peers and adults; and destroying classrooms in a manner that requires clearing the classrooms to keep his peers safe.

3. During the [REDACTED] school year, the student's [REDACTED] year, he received [REDACTED] days of in-school suspension (ISS) and [REDACTED] days of out-of-school suspensions (OSS).

4. During his ISS days, he received the ESE services that were in his Individualized Education Plan (IEP), provided by [REDACTED].

5. Petitioner's [REDACTED] and advocate testified that the student was often sent home due to his severe behaviors, and that when this was done, it was not recorded as an OSS. There was no evidence establishing the number of times this occurred.

6. Petitioner did not establish, by a preponderance of the completed substantial evidence, that the threshold of ten days of OSS, which triggers a manifestation determination review, was met here.

7. Even so, the IEP team did opt to conduct a Functional Behavior Assessment (FBA) and create a Behavior Intervention Plan (BIP) for the student. The parent signed the consent form on September 29, [REDACTED]. Yet, without any basis in a statute or regulation, the School Board decided that the deadline for completing what they considered a “reevaluation FBA” was 90 school days.¹ Shockingly, given the severity and consistency of this student’s behaviors, the FBA was not completed until January 30, [REDACTED].

8. The evidence established that an MDR did not need to be held for the student. He did not serve more than ten consecutive days of OSS, and there was no evidence of more than ten OSS days over the school year, either.

CONCLUSIONS OF LAW

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

10. Petitioner bears the burden of proof with respect to the issue raised herein, by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

11. In enacting the IDEA, Congress sought to “ensure that all children with disabilities have available to them a free appropriate public education [FAPE] 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

¹ An FBA is not considered a reevaluation; and, even if it were, no provision entitles a 90-school day delay in completing any type of evaluation, whether initial or an actual reevaluation.

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).

12. 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 to such child." 20 U.S.C. § 1415(b)(1), (b)(3), and (b)(6).

13. School districts have certain limitations on their ability to remove disabled children from their educational placement following a behavioral transgression. The IDEA provides that where a school district intends to place a disabled child 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).

14. A disciplinary change of placement occurs if a removal exceeds ten consecutive school days or if the child is subjected to a series of removals that constitutes a pattern. A pattern exists when the series totals more than ten school days in a school year, the child's behavior is substantially similar to behavior in previous incidents that resulted in removals, and additional

factors such as the length of each removal, the total amount of time removed, and the proximity of the removals support that conclusion. The school-based team makes the pattern determination case by case, and that determination is subject to due process review. 34 C.F.R. § 300.536(a) and (b); Florida Administrative Code Rule 6A-6.03312(1)(a).

15. If an MDR is required, the necessary inquiry is set forth 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.

16. Generally, if the conduct is deemed a manifestation of the child's disability, the student must be returned to the educational placement from

which he or she was removed. 34 C.F.R. § 300.530(f)(1). Additionally, if a BIP was not in place at the time of the misconduct, the school district must conduct an FBA and implement a BIP for such child. *Id.*

17. 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).

18. Here, there is no evidence that the student was subjected to a pattern of OSS that exceeded ten days over the [REDACTED] school year. The School Board had no duty to convene an MDR. An FBA and a BIP were eventually developed by the end of his [REDACTED] year.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Complaint is denied, in all aspects.

DONE AND ORDERED this 18th day of September, 2026, in Tallahassee, Leon County, Florida.


Case No. 26-3944EDM

JESSICA E. VARN
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
Division of Administrative Hearings
this 18th 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).