

Florida Department of Education Bureau of Exceptional
Education and Student Services

Dispute Resolution and Monitoring Unit: Due Process
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AMENDED REQUEST FOR DUE PROCESS HEARING

Date of Request: 04/25/2024 District: Flagler County
Student's Name: Brendan Depa Date of Birth: 08/22/2005
Student's Id #: 1821001452 School: Matanzas High School
Parent's Name: Leanne Depa
Exceptionality: OHI, EBD
Address of Student: Home Phone Number:

Name of Person Completing the Form: Stephanie Langer,
Esq. Maria Cammarata, Esq. Langer Law. P.A. Cammarata &
Cammarata, P.L. 15715 S. Dixie Highway, Suite 205 2598 E.
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Is this a request for an expedited due process hearing
related to discipline issues? No

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2 STATEMENT OF ISSUES AND PROPOSED RESOLUTION This
request for hearing is being brought by Brendan Depa
(B.D.) against the Flagler County School Board
("District") pursuant to Section 1415(b)(6) and (b)(7)(A)
of the Individuals with Disabilities Education Act
("IDEA") and in accordance with 20 U.S.C.
§1415(b)(7)(A)(I).

STATEMENT OF FACTS

1. B.D. is an 18-year-old student with Other Health
Impaired, Emotional Behavioral Disorder, Intermittent
Explosive Disorder, Mood Disorder and ADHD who resides in
Flagler County, Florida, within the boundaries of the
Flagler County School District.

2. B.D. has a date of birth of 08/22/2005 and a student Id # of 1821001452.
3. The School Board of Flagler County, Florida ("district") is a corporate body and governmental agency, duly empowered by the Constitution and statutes of the State of Florida to administer, manage and operate the public schools of Flagler County, Florida.
4. The district receives state and federal funding for the education of children with disabilities. The district and charter school meet the definition of a public entity under 42 U.S.C. section 12131.
5. B.D. was found eligible for exceptional student education (ESE) services, has an Individualized Education Plan (IEP) and remains eligible to date.
6. On February 21, 2023, B.D. was suspended out of school for five days. He is accused of attacking a paraprofessional.
7. The incident was caught on video tape and made national news.
8. B.D. never returned to Matanzas High School.
9. He was eventually arrested. At the time of the arrest, he was a juvenile.
10. Because Flagler does not have a juvenile facility, he was transported to Jacksonville.
11. Before his arrest, a manifestation determination hearing was held, and the district found that the conduct was a manifestation of his disabilities.
12. Before his arrest, but with the belief that the district knew an arrest was imminent, an IEP meeting was held that changed the student's placement. He was unilaterally and over the objection of the parents, removed from the public school system and placed in a virtual home instruction program. He received four hours weekly of instruction. The student's IEP was stripped of most of the supports and services that he clearly needed.

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- 3 13. Once arrested, the student was transported to a juvenile facility in Duval County. Duval County drafted an IEP for the period of time B.D. remained in Jacksonville.
14. After approximately six months, B.D. was returned to Flagler County. Upon his return, Flagler County School

District, did nothing. No education has been provided to B.D. since his return to the county.

15. In addition to failing this student after this incident occurred, the district failed this student before the incident occurred.

16. The student's disabilities, triggers and problem behaviors were well known.

17. The district's failure to address B.D.'s needs lead to the violent incident with the paraprofessional.

18. The district should be held to account for its failures which have forever changed the trajectory of this young man's life.

19. B.D. has an IEP that identifies, in part, his educational needs and the supports and services the district is required to provide with fidelity.

20. B.D. has a long history of trauma and mental health issues along with several diagnosis of disabilities that impacted him in the school setting. He was often Baker Acted and eventually sent to a residential program for stabilization. He spent almost a full year in a residential placement that provided 24/7 supervision, care and treatment.

21. When B.D. was released from his residential placement, he entered the Flagler County School District.

22. B.D. was discharged from Springbrook (the residential facility) on or about November 2, 2020 and was accepted to a level 6 Florida behavior group home (ECHO) under the care of the Agency for Persons with Disabilities Med Waiver Program. B.D. was assigned his own Board-Certified Behavior Analyst ("BCBA") to help control his behaviors while at home and in the community.

23. On or about December 2020, B.D. was enrolled at Matanzas High School in Flagler County, but he did not start school right away.

24. B.D.'s mother provided the district with B.D.'s private psychological evaluation and information about his previous hospital setting.

25. The private evaluation provided among other things that B.D. had a history of mood difficulties, expressing mainly anger and anxiety, concrete thinker, difficulty with

emotional control, ADHD, ASD and depression. Some recommendations included to focus on prevention strategies, conduct a functional behavior assessment (FBA) in this new setting, individual and family therapies, increased social positive social interactions, and social skills development. The report highlighted, that B.D.'s "mental health, anxiety and sadness need to be a core component of treatment." and further stated that B.D.'s "sources of anxiety and sadness need to be a core component of treatment."

26. It is not clear that the school district did anything with this report or its recommendations.

27. It was not until February 12, 2021, that Matanzas High School conducted a Speech and Language Evaluation and a Psychological Evaluation.

28. The school psychological evaluation noted the parent's report that "he has been observed to have destructive and aggressive behaviors and acting without thinking... he has excessive mood swings, temper tantrums, angers easily, and threatens others."

29. It was not until March 3, 2021, that B.D. was found eligible for an IEP with the eligibilities of Other Health Impaired ("OHI") and Emotional Behavioral Disorder ("EBD").

30. The BCaBA who oversaw B.D. at his behavior group home attended the IEP meeting and shared that B.D. attempted to assault staff or students in 4 different incidences and needed to be restrained by 2-1 adults against a wall or prone in all instances during the first month of residence. Since then, he has been restrained from assaulting a student 1-2 times and needed to be restrained by 3 adults and placed against a wall. He was also engaged in property destruction when upset...unable to deescalate without restraint. The team agreed B.D. needed a paraprofessional for safety and a Functional Behavior Assessment ("FBA") would be conducted.

31. There was further delay before B.D. was permitted to start school since the school was "not ready" to implement the IEP until the very end of March 2021.

32. The FBA was finally completed on April 19, 2021. The only behavior addressed was task refusal. No Behavior

Plan was developed at that time. A behavior plan was not developed until March of 2022.

33. It is unclear why Flagler did not place him in a more restrictive placement.

34. Once he was allowed to start school, he was almost immediately suspended out of school for five days for making threats to other students and for harming a district employee. He pushed an adult aid who fell down and was injured. The police were called.

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5 35. An IEP meeting was held on December 7, 2021. The team agreed that a new FBA would be conducted due to this violent behavior. The team agreed to meet again in 60 days. But before they could meet again, B.D. was again disciplined for harassing and intimidating the school staff. He would use aggressive language and approach the staff in an aggressive manner, putting his finger in their faces. His response, "This is not physical aggression. I am not touching you."

36. B.D. is smart, but he has been diagnosed with an autism spectrum disorder and has communication deficits that were not properly addressed. His explosive nature was also ignored and his need for social and pragmatic language interventions were not sufficiently addressed. B.D. could have and should have received direct instruction on how to problem solve and express himself in a manner that is appropriate, and which followed social norms. As a large black male student, he is subjected to misperceptions and racism. He needed to be taught how his presence, even if there was no physical touch, could and would be seen as scary and intimidating. He needed to be taught how to problem solve, communicate, and interact with people in positions of authority or with his peers.

37. A month later B.D. was again disciplined for spit at another student. He verbally threatened the other student saying that the student should die and that he should have shot the other student. B.D. received a one day suspension.

38. All behavior is communication and B.D. often spit at people when he was mad or upset or unregulated. He spit at the paraprofessionally on the day of the incident that

resulted in the paraprofessional being hurt and B.D. being removed from school forever and incarcerated indefinitely at this time.

39. B.D. was never provided any direct instruction or effective supports and services to replace the spitting with a socially appropriate means to express his frustration and anger. The district is tasked with not only identifying problem behaviors but also with teaching the student to replace those problem behaviors. In this case, the district failed to properly or effectively address B.D.'s needs. Discipline was minimal and does nothing to address the student's needs. It is a temporary removal of the student but does nothing to educate the student or address the student's needs.

40. A month later, B.D. was again disciplined for leaving class without permission and grabbed a female employee. When redirected by the staff, B.D. ignored all directives. B.D. learned

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6 that he could basically do whatever he wanted in the school setting. The district failed to provide the direct instruction, supports and services to teach B.D. how to not only function in the school setting but how to regulate his emotions, communicate his wants and needs and be an independent productive member of his community.

41. Just the next day, B.D. was again disciplined for yelling at his teacher and again leaving the classroom. His refusal to follow the school rules continued to escalate with little to no intervention from the school district.

42. A few days later, B.D. again refused to stay with his class, his paraprofessional, and the school administrators. When confronted, B.D. just laughed and ran away. He said, "don't tell me that, I hate it". The school did not seem to have any control over B.D. and B.D. was allowed to do whatever he wanted with little to no intervention or consequences.

43. The district had the responsibility to intervene. If the plans in place were not working, they needed to be reviewed and revised. If the placement was not appropriate, the district had an obligation to change it. If the supports and services were not sufficient, the

district had an obligation to increase or change them. To allow B.D. to continue to escalate only lead to the incident where the paraprofessional was harmed and B.D. was arrested. Had these issues been addressed in real time, B.D. would not have harmed the paraprofessional and would not have been arrested and facing significant time incarcerated.

44. The next school year, 2022-2023, began with more of the same. Just a few days into the school year, B.D was disciplined for verbally and aggressively interacting with the paraprofessional. He threatened to punch her in the face and he spit at her. Another student stepped in between B.D. and the paraprofessional. It should be noted that this paraprofessional was the same one he eventually did harm. B.D. showed no changes in behavior. He was aggressive both inside and outside the classroom. He would not follow his teachers, paraprofessionals or school administrators' instruction or directives. He was suspended out of school for one day but no significant changes were made to his IEP or behavior plan, his placement was not addressed and his supports and services were not reviewed or revised. There was no increase in supports and services.

45. This continued into September 2022. He would run away, ignore directives, spit at adults and peers, and physically charge at people. He did receive a few days of suspension but discipline alone does not work to change problem behaviors. Discipline removes a student

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7 temporarily but does nothing to address the problem behaviors and provides no instruction on how to express oneself, regulate oneself or follow the classroom and school rules. The district's failure to properly intervene is the reason the paraprofessional was injured, and the student was arrested. The trajectory is clear. Had the district intervened at any of these points, would have prevented the eventuality of what occurred.

46. It is almost a predictable outcome when the student is allowed to continue to escalate without meaningful intervention.

47. October 2022 saw a few more incidents and they continued into December 2022, when B.D. was caught on

camera physically pushing another student. He was again suspended for one day but nothing else was done to address his needs.

48. This led to the incident on February 21, 2023. This incident started with a paraprofessional and the student exchanging words and the student being reprimanded in front of his peers. He was punished by being denied his electronic device, even though other students were allowed theirs. The paraprofessional and the teacher began discussing his ability to bring electronics to school, in front of him and in front of his classmates. Brendan attempted to defend himself. The teacher and the paraprofessional ignored him and continued to talk about him in front of him and his classmates. The paraprofessional threatened to take his electronic device and Brendan got even more upset. The matter continued to escalate. Brendan eventually spit on the paraprofessional. The paraprofessional got mad and accused him of assaulting her and stormed out of the classroom presumably to report him for assault. The video shows the paraprofessional leaving the classroom and this student following her out.

49. The paraprofessional should not have interacted with the student in this manner. Her and the teachers actions caused a predictable outcome. While her anger at B.D. for being spit on is understandable, her response is not an evidence based intervention to address the spitting or defiance by B.D. The IEP and behavior set out the evidence interventions that should be utilized when a student misbehaves. The paraprofessional did not follow the plans and did not utilize an evidence based strategy putting herself in a dangerous situation. An avoidable situation.

50. It should be noted that the school and staff working with him and the district knew that the electronics, specifically the Nintendo and its use on a school campus was a trigger for

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8 escalating behaviors. Its usage was sometimes allowed as a reward and in free time but sometimes it was not allowed. There was no consistency, and it would be confusing for any student, but especially B.D. It was a

source of great problems and problem behaviors. This was never addressed in the student's behavior plan and the private BCaBA's documentation, concerns and warnings appear to have been completely disregarded by the district and staff working with B.D.

51. Had the student's needs been properly addressed and had the staff around him been properly trained, this incident would not have occurred.

52. B.D. was a ticking time bomb. The district's failure to address his needs or have staff around him with the proper training resulted in the incident where the paraprofessional was hurt and B.D. was eventually arrested.

53. The district's failure to address the whole child, failure to address the student's needs and failure to provide staff with the proper training is a denial of FAPE.

The Petitioner has engaged Cammarata & Cammarata P.L. and Langer Law, P.A. to assist in having B.D.'s legal rights enforced and are obligated to pay a reasonable fee for their services.

Evidence supporting these allegations includes a review of the available records and interviews with his family. We reserve the right to supplement our hearing request upon receipt of student records from the school(s) and district and any new information revealed through this process or otherwise.

The student seeks to address the available remedies under: a. Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1400 et seq. ("IDEA"); b. Title II of the Americans With Disabilities Act, ("ADA") 42 U.S.C. § 12132, c. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("section 504"); d. Section 1983 e. Fla. Stat. § 413.08, through the Florida Civil Rights Act ("FCRA"); f. § 760.07, Fla. Stat., and their implementing federal and state regulations; g. 34 C.F.R. § 300.001 et seq.; h. 45 C.F.R. §§ 84.31-37; i. §1001.215, Fla. Stat; j. §1002.20 et seq., Fla. Stat; k. §1002.22 (3) (a) (4) Fla. Stat; l. §1003.02 (1) (d), Fla. Stat; m. §1003.55, Fla. Stat; n. §1003.57, Fla. Stat. (2005);

9 o. §1006.28(3)(a), Fla. Stat; p. §1006.40(2), Fla. Stat; q. §108.22(3)(c)(6) & (8), Fla. Stat r. §1008.25, Fla. Stat; s. §1011.62, Fla. Stat; and t. Fla. Admin. Code R. 6A - 6 et seq.

Finally, the student has protections under a number of statutes in regard to payment of prevailing party attorney fees, including the IDEA, Section 504, Section 505, Civil Rights Attorney's Fee Award Act of 1976, 42 U.S.C § 1988, 42 U.S.C. § 1983 and 28 U.S.C. § 1927, 29 U.S.C. § 794a (b) and the Civil Rights Act of 1871, which is a federal statute in force in the United States. Several of its provisions still exist today as codified statutes, but the most important stillexisting provision is 42 U.S.C § 1983.

We reserve the right to raise additional deficiencies as records are made available to us and additional issues arise or are identified in these proceedings.

PROPOSED RESOLUTION TO THE EXTENT KNOWN In resolution of the complaint, Petitioner seeks a determination that the actions and omissions of the Flagler County Public Schools constitute procedural and substantive violations of the IDEA resulting in denial of FAPE and resulting in significant harm to B.D. Petitioner asks that he be declared the prevailing party in this proceeding. The Petitioner is further seeking compensatory education for academic, communication, independent functioning and social emotional supports and services, placement in a behavioral therapeutic school with wrap around services designed for students with severe behavior disorders paid for by the district, reimbursement for any out of pocket expenses included but not limited to tutoring expenses and mental health supports and services; reimbursement of costs, including fees, and any other relief this court deems just and equitable. The petitioner further reserves the right to seek such other or additional relief as the Hearing Officer may deem just and proper. Petitioner further reserves the right to seek leave to amend the Complaint pending full disclosure by the school district of school records.

10 Should the District be unwilling to accept the proposed resolutions cited above, B.D. demands a due process hearing to be completed by an Administrative Law Judge of the Division of Administrative Hearings. This case should be styled: "B.D., v. Flagler County School Board"

DUE PROCESS HEARING CONSIDERATIONS Petitioner estimates that four (4) days will be required for such a hearing. Petitioner elects to open the hearing to the public; sequester witnesses, and reserve the right to have B.D. present at the hearing. Petitioner invokes his right to have the hearing "conducted at a time and place that is reasonably convenient to the parents and the child involved." 34 C.F.R. § 300.515(d).

The Petitioner hereby requests a copy of the transcript of the hearing as provided under State and federal law.
Mediation

Prior to initiating the above due process hearing, I understand that I have a right to participate in the mediation in an attempt to resolve my dispute with the district. Mediation is voluntary on the part of both parties, not used to deny or delay a parent's right to a due process hearing, conducted by a qualified and impartial mediator who is trained in effective mediation techniques, and at no cost to the parents. X

I would like to participate in mediation in order to resolve this dispute, but only on the condition that such mediation not in any way delay either the filing or the hearing of this complaint.

REVOCATION OF CONSENT

Please be advised that to the extent that the Flagler County Public Schools and its agents have previously received consent from the family to evaluate the student or disseminate or obtain confidential information regarding B.D., other than materials released to his legal counsels or parent, that consent is hereby revoked.

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11 CONTACT INFORMATION

The student requests that all communication in this matter proceed through legal counsel, whose contact information is listed below: Stephanie Langer, Esq. Maria

Cammarata, Esq. Langer Law. P.A. Cammarata & Cammarata,
P.L. 15715 S. Dixie Highway, Suite 205 2598 E. Sunrise
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Thank you for your prompt attention to this complaint.
Very truly yours, /s Stephanie Langer Stephanie Langer,
Esq. Fla. Bar. 149720

CERTIFICATE OF SERVICE WE HEREBY CERTIFY that on this 25
th day of April, 2024, we filed the foregoing document
with the Florida Department of Education and the Flagler
County School Board Attorney.

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12 Date of Request: 04/25/2024 District: Flagler County
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