

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs.

Case No. 16-2915E

MIAMI-DADE COUNTY SCHOOL BOARD,

Respondent.

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FINAL ORDER

A final hearing was held in this case before Jessica E. Varn, an Administrative Law Judge of the Division of Administrative Hearings (DOAH) in Miami, Florida, on October 17, 2016.

APPEARANCES

For Petitioner: Petitioner's parents, pro se
(Address of Record)

For Respondent: Mary C. Lawson, Esquire
Miami-Dade County Public Schools

STATEMENT OF THE ISSUE

Whether the School Board failed to provide a free, appropriate public education (FAPE) within the meaning of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.

§ 1400, et seq., by not permitting the student's [REDACTED] to be [REDACTED] one-on-one paraprofessional and by not providing the student with some educational benefit.

PRELIMINARY STATEMENT

On May 25, 2016, Petitioner's [REDACTED] filed a Request for Due Process Hearing (Complaint) in this matter, which the School Board promptly forwarded to DOAH for further proceedings. The due process hearing was scheduled for July 6 and 7, 2016. On June 2, 2016, the School Board filed a Request for Due Process Hearing, seeking to instruct the student utilizing the state standards access points curriculum. At the request of the School Board (and with no objection raised by Petitioner), the cases were consolidated, and the hearing remained scheduled for July 6 and 7, 2016. After a telephonic conference with the parties, and a request from Petitioner to reschedule the hearing, the hearing was rescheduled for August 2 and 3, 2016.

Petitioner's [REDACTED] hired an advocate to represent them, and an Order Accepting Qualified Representative was entered on July 26, 2016. On that same date, Petitioner's [REDACTED] filed a request to place the case in abeyance, which was granted. On August 16, 2016, the School Board requested that the cases be severed, which was granted. On August 30, 2016, Petitioner's Qualified Representative requested permission to withdraw from the case, which was granted. The hearing was rescheduled for

October 17 and 18, 2016. On October 11, 2016, a pre-hearing telephone conference was held, wherein the undersigned explained the procedures of the due process hearing.

During the hearing, Petitioner's [REDACTED] testified on behalf of Petitioner, and Petitioner Exhibits 1 through 4 were admitted into evidence. The School Board presented the testimony of [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. School Board Exhibits 1 through 4, 7, 8, 11, 12, 14, 16 through 22, 29, and 35 were admitted into evidence. Official Recognition was taken of School Board Exhibits 30 through 33.

The hearing Transcript was filed on October 27, 2016. The parties thereafter submitted proposed final orders, which the undersigned has considered in the preparation of this Final Order. For stylistic convenience, the undersigned will use [REDACTED] pronouns in this Final Order when referring to Petitioner. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

Unless otherwise noted, citations to the United States Code, Florida Statutes, Florida Administrative Code, and Code of Federal Regulations are to the current codifications.

FINDINGS OF FACT

1. The student is a [REDACTED]-old high school student who was found eligible for special education in the categories of

████████████████████ and ████████████████████. ██████████ attended private school for eight years, including one school that was designed exclusively for students with disabilities.

2. During ██████████ time in the private schools, ██████████ served as ██████████ one-on-one paraprofessional. ██████████ progressed from year to year with extensive support from ██████████ ██████████, earned high grades, and was awarded honors for ██████████ achievements.

3. ██████████ entered a Miami-Dade County public high school, School A, for the 2015-2016 school year. The ██████████ did not disclose that the student had been retained one year in elementary school, that ██████████ required extensive paraprofessional assistance, or that ██████████ was performing well below grade level. They requested that the student be placed in general education classes; and, given the information provided to the school at that time, the school agreed to this placement.

4. In October, school officials assembled an individualized education plan (IEP) team, which met and developed an IEP on October 29, 2015. The ██████████ expressed the desire for the student to access the general curriculum in general education classrooms. The team noted that the student had scored well below average on the standardized testing that ██████████ had undergone in 2014.

5. The student's ██████████ was present at the IEP meeting, and ██████████ was informed that the student was not passing any of ██████████

academic classes at that point. The student's [REDACTED] indicated that [REDACTED] had passed all [REDACTED] previous school years with the help of [REDACTED] private paraprofessional, and that [REDACTED] understood that the student may not be able to pass the general education classes.

6. The team noted that the student's progress in the general education setting was negatively affected by [REDACTED] need for prompting and redirection. The student did not take complete notes, or write down assignments (all functions [REDACTED] [REDACTED] performed for [REDACTED] in the private schools). When [REDACTED] was given tasks or assignments, [REDACTED] did not complete them in a timely manner and had to be redirected with high frequency. This, in turn, affected [REDACTED] ability to have accurate information and practice for assessments.

7. The student also was not engaging with any of [REDACTED] peers at the beginning of the school year.

8. In terms of specialized instruction, the IEP team agreed to provide it in the following areas: language, math, behavior, organization, reading, writing, social skills, and task completion skills. A long list of accommodations was included in the IEP, as well.

9. A Functional Behavior Assessment (FBA) and [REDACTED] were prepared for the student, as well. The team ultimately decided, during the October IEP meeting, to request a paraprofessional for the student.

10. In January 2016, halfway through the school year, the IEP team met once again. At this meeting, the student's [REDACTED] attended, rather than the [REDACTED]. The team noted that the student was able to greet adults and peers when [REDACTED] was spoken to, was able to respond to basic "yes" or "no" questions, as well as follow simple instructions. [REDACTED] could follow [REDACTED] class schedule and was able to write headings and some notes with teacher assistance. But given that the student was easily distracted, and [REDACTED] required prompting and constant redirection, [REDACTED] progress in the general education setting was significantly compromised.

11. The IEP team ultimately, over the [REDACTED] objection, recommended that the student be placed in a resource room for all academic areas, rather than a general education class. The [REDACTED] filed a due process hearing request, which led to a resolution session.

12. The parties reached a resolution: the school would re-evaluate the student, and would provide paraprofessional assistance, [REDACTED] support, and assistive technology in the general education setting.

13. The psychoeducational evaluation revealed that the student was functioning at the "extremely low" range in intellectual functioning, and that in most of the other areas, [REDACTED] was operating in the "low average" level. The evaluator

recommended that the student be placed in a smaller classroom setting where [REDACTED] would receive more individualized assistance, and that the student's curriculum be modified given that the student had demonstrated great difficulty in reaching any success using the standard curriculum.

14. The school created an assistive technology plan for the student, which included: [REDACTED], indicating appropriate behaviors; [REDACTED]; one-on-one work with the teacher when available; written directions; Smart Board use for all teachers; word banks; multiple choice assessments; proximal seating; and graphic organizers.

15. By May of 2016, the teachers were reporting back that the student was unable to accomplish most tasks even with all the accommodations provided, and faithful implementation of the assistive technology tools.

16. During the same month, the IEP team met once again; the [REDACTED] was present for this meeting. [REDACTED] expressed concern regarding the student's academic progress. The IEP team indicated that the student had a significant cognitive disability; that [REDACTED] is unable to master the grade-level general state content standards, even with appropriate accommodations, assistive technology, and accessible instructional materials; and that [REDACTED] required a curriculum based on the Sunshine State Access Points in all academic areas. The team also recommended that the

student receive the curriculum in general education classes, which was always the [REDACTED] stated preference.

17. The [REDACTED] did not consent to the provision of instruction to their [REDACTED] in the state standards access points curriculum.

18. In light of the [REDACTED] refusal of the modification of their [REDACTED] curriculum, the IEP team met on May 17, 2016. At this meeting, the team agreed to continue the student's placement in the resource room with a one-on-one paraprofessional, and did not change the student's curriculum.

19. A few days later, the [REDACTED] filed this due process Complaint.

20. At the hearing, the [REDACTED] agreed that the student had definitely benefitted from the music program at the school, that [REDACTED] had developed a stronger sense of independence while attending a large public high school, and that [REDACTED] social skills improved because [REDACTED] attended school with non-disabled peers. The student also developed [REDACTED] self-help skills, which were a goal listed on the IEPs.

21. The [REDACTED] insisted at the hearing that if the student's sibling could serve as [REDACTED] paraprofessional, the student could achieve more academic success without modifying [REDACTED] curriculum, and without removing [REDACTED] from the general education classes.

22. The [REDACTED] did not enroll the student at School A for the 2016-2017 school year.

CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. See § 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

24. Petitioner bears the burden of proof with respect to each of the issues raised herein. Schaffer v. Weast, 546 U.S. 49, 62 (2005) ("The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.").

25. In enacting the 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). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

26. In Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982), the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a child with FAPE. First, it is necessary to examine whether the school system has complied with the IDEA's procedural requirements. Id. at 206-07. A procedural error does not automatically result in a denial of FAPE. See G.C. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the child's right to a free, appropriate public education, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 (2007).

27. Pursuant to the second step of the Rowley test, the undersigned must determine if the IEP developed pursuant to the IDEA is reasonably calculated to enable the child to receive "educational benefits." 458 U.S. at 206-07. The Eleventh Circuit Court of Appeals has clarified that the IDEA does not require the local school system to maximize a child's potential; rather, the educational services need to provide "only a 'basic floor of opportunity,' i.e., education which confers some benefit." Todd D. v. Andrews, 933 F.2d 1576, 1580 (11th Cir. 1991); C.P. v. Leon Cnty. Sch. Bd., 483 F.3d 1151, 1153 (11th

Cir. 2007) ("This standard, that the local school system must provide the child "some educational benefit," has become known as the Rowley "basic floor of opportunity standard.") (internal citations omitted); Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289, 1292 (11th Cir. 2001) ("[A] student is only entitled to some educational benefit; the benefit need not be maximized to be adequate").

28. Turning to the facts in this case, it is important to note that the IDEA does not guarantee academic success, nor does it require that a student achieve academic success at a certain rate. It stands to reason that in assessing whether this student received FAPE, the undersigned must measure ■■■ progress in light of the limitations imposed by ■■■ significant disabilities.

29. The record as a whole demonstrates that the student progressed, at least minimally, while at School A. ■■■ developed more independence, ■■■ improved ■■■ self-help skills, ■■■ improved ■■■ social skills, and ■■■ enjoyed and achieved success in music class. ■■■ was incapable of reaching academic success in the general education classes due to the limitations imposed by ■■■ disabilities, not due to the failure of the school to allow ■■■ relative to be ■■■ paraprofessional.

30. Petitioners presented no evidence establishing that the student did not receive FAPE while at School A and only insisted

that the student's relative should be [REDACTED] one-on-one paraprofessional.

31. The request for the student to have a relative serve as [REDACTED] one-on-one paraprofessional must be denied, as the undersigned has no authority to direct the School Board to hire a particular person, or to agree to this parental request, absent an IEP team decision indicating that a particular person with particular qualifications must serve as the student's paraprofessional. See § 1012.23(1), Fla. Stat. (stating that school boards may adopt rules governing all personnel matters, including the assignment of duties and responsibilities for all employees); Letter to Wessels, 16 IDELR 735 (OSEP 1990) (stating that the selection of location or specific teachers are administrative decisions to be made by school personnel, unless specifically made by a student's IEP team).

32. Petitioner failed to prove that the School Board denied the student FAPE.

ORDER

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

DONE AND ORDERED this 17th day of November, 2016, in
Tallahassee, Leon County, Florida.

S

JESSICA E. VARN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 17th day of November, 2016.

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).