

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**,

Petitioner,

vs.

Case No. 17-5394E

ST. LUCIE COUNTY SCHOOL BOARD
AND RENAISSANCE CHARTER SCHOOL
OF ST. LUCIE,

Respondents.

FINAL ORDER

A due process hearing was held in this case before Jessica E. Varn, an Administrative Law Judge of the Division of Administrative Hearings (DOAH) by video-teleconference with sites in Tallahassee and Port St. Lucie, Florida, on February 13 and 20, 2018.

APPEARANCES

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

For Respondent

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STATEMENT OF THE ISSUE

Whether a separate classroom is the [REDACTED]

[REDACTED] for the student.

PRELIMINARY STATEMENT

A request for a due process hearing was filed on September 25, 2017. A Case Management Order was issued on September 27, 2017, establishing deadlines for a sufficiency review, as well as for the mandatory resolution session. Finding good cause for an extension of time, the undersigned extended the deadlines and issued an Amended Case Management Order on October 6, 2017. A pre-hearing telephonic conference was held on November 7, 2017, in order to consult with the parties as to the scheduling of the due process hearing; the due process hearing was then scheduled for January 9 through 11, 2018.

A joint request for continuance was filed on December 14, 2017, which the undersigned granted on December 15, 2017. The parties were ordered to file a status report by January 15, 2018. The due process hearing was rescheduled for February 13, 2018.

The hearing was partially held on February 13, 2018, and concluded on February 20, 2018.

During the hearing, testimony was heard from the student's mother and father; [REDACTED], the Exceptional Student Education (ESE) Specialist at School A; [REDACTED], an ESE advocate; [REDACTED], Director of ESE Services; [REDACTED], Executive Director of ESE Services; [REDACTED], teacher; [REDACTED], [REDACTED] ([REDACTED]); [REDACTED], teacher; [REDACTED], [REDACTED]; [REDACTED], Director of ESE Services for School A. Petitioner offered no exhibits into the record; Respondents' Exhibits 1 through 45 were admitted into the record, at the beginning of the due process hearing, without objection.

The Transcript was filed on March 21, 2018. By agreement of the parties, proposed orders were due on April 11, 2018; the final order was due on May 2, 2018. On April 4, 2018, Respondents filed an unopposed request to extend the deadline for the proposed and final orders by one week, which was granted. By order dated April 4, 2018, proposed orders were due on April 18, 2018, and the final order deadline was extended to May 9, 2018.

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

FINDINGS OF FACT

1. The student is a [REDACTED], who is described as [REDACTED], and also [REDACTED]. [REDACTED] was found eligible for ESE due to [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) in October 2015.

2. The student [REDACTED] with [REDACTED], needs [REDACTED], has a [REDACTED], has [REDACTED], and [REDACTED]. [REDACTED] also has [REDACTED].

3. During [REDACTED] year, [REDACTED] attended School B, and was [REDACTED] for ESE students. The classroom served [REDACTED], contained [REDACTED], and was, by all accounts, a [REDACTED] that [REDACTED] the student's needs. While the student [REDACTED] [REDACTED] Individualized Education Plan (IEP) goals, [REDACTED] certainly made [REDACTED].

4. Given the [REDACTED] faced by the student, [REDACTED] were added to [REDACTED] IEP in December 2016.

5. In March 2017, the student's parents registered [REDACTED] at School A for the upcoming school year, 2017-2018, for

[REDACTED]. School A is a [REDACTED] school; that is, as of 2014, School A entered into a [REDACTED] school contract with the [REDACTED] ([REDACTED]), which is the St. Lucie County School Board. School A [REDACTED] [REDACTED], although it does provide ESE services, such as consultation, support facilitation, and resource services. If School A is [REDACTED], School A and the School Board [REDACTED] to ensure that the needs of that student are met.

6. The parents registered the student at School A, the [REDACTED], because the student's [REDACTED] attended School A. The student's registration was done during open enrollment, [REDACTED] [REDACTED] needs. Pursuant to the [REDACTED] contract, School A [REDACTED] IEPs.

7. In May 2017, the student was [REDACTED] for [REDACTED]-[REDACTED] needs. The student was found to have [REDACTED] [REDACTED], [REDACTED], and [REDACTED] [REDACTED] and [REDACTED]. [REDACTED] exhibited [REDACTED] in [REDACTED] that were [REDACTED] and lead to [REDACTED] with [REDACTED]. Throughout the clinician's observations, the student [REDACTED] and [REDACTED] to [REDACTED] in the [REDACTED] and [REDACTED] [REDACTED].

8. Also in May 2017, the student was evaluated for [REDACTED]. [REDACTED] was found to be [REDACTED] the [REDACTED], which meant that [REDACTED] exhibited a [REDACTED] in [REDACTED].

9. During this evaluation process, the student's parents notified School A that the student had an IEP, identified the student's eligibility category, and told School A that the [REDACTED]. The student's parents did not, however, specify the services that the student had been receiving at school B.^{1/}

10. In June 2017, the IEP team gathered to address the IEP in light of the evaluations that had been conducted, and as a review of the student's progress and needs. The educators and professionals on the IEP team [REDACTED] that the student remain in a separate ESE classroom for the upcoming [REDACTED] year.

11. The educators on the IEP team credibly testified that the student's need for [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] could not be met in a general education classroom, but could continue to be met if placed in the same placement as the [REDACTED] year at School B. Additionally, the student's need for [REDACTED] [REDACTED] in [REDACTED] [REDACTED] for the upcoming [REDACTED] year. The student's parents

[REDACTED], wanting the student to enter [REDACTED] in a [REDACTED].

12. The placement recommended for the student's [REDACTED] year was a [REDACTED], attended by ESE students with [REDACTED] or other [REDACTED] who [REDACTED]; the classroom is engineered for [REDACTED] in particular, with [REDACTED], [REDACTED], [REDACTED], [REDACTED], and more [REDACTED].^{2/} The classroom is limited to [REDACTED], with [REDACTED] to work with the students. The recommended placement also allowed for the student to attend [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] with nondisabled peers.

13. Although the parents disagreed with the recommended placement in the June 2017 IEP, the student's parents agreed with all of the IEP goals, all of the IEP services, and they agreed that the student continues to need [REDACTED] in all areas.

14. The student began [REDACTED] [REDACTED] year at School A on August 21, 2017, despite the fact that the student's parents knew that School A did not have any ESE separate classrooms.

15. On August 28, 2017, the student was [REDACTED] using the [REDACTED], which focuses on [REDACTED] and [REDACTED]

[REDACTED]. The student [REDACTED]
[REDACTED].

16. The general education [REDACTED] teacher credibly testified that the student [REDACTED], [REDACTED], [REDACTED], and [REDACTED] than any other student in the classroom. The student is [REDACTED] classroom [REDACTED], is [REDACTED] what [REDACTED] had [REDACTED], is [REDACTED] (and often exhibits [REDACTED]), is [REDACTED] to, and is [REDACTED] of any peer or teacher. The [REDACTED] seems to be in [REDACTED]—the student [REDACTED].

17. The student [REDACTED], and [REDACTED].

18. On September 22, 2017, the IEP team met to address the student's [REDACTED].

19. The September 2017 IEP meeting [REDACTED]; the classroom teacher reported that the student was [REDACTED] on [REDACTED] IEP goals, and that the needs of the student [REDACTED] those of [REDACTED] peers. After reviewing the data collected in the [REDACTED], and after [REDACTED] the student as much as possible in the general

education classroom, the educators on the IEP team all concurred that the student's [REDACTED] [REDACTED], and the parents once again disagreed.

20. At the IEP meeting, the School Board offered the student a seat at School C, which is the student's neighborhood school. School C is capable of implementing the IEP, as it has a [REDACTED]. As of the date of the due process hearing, the student's parents had refused the offered seat, and the student remained at School A.

21. The student is [REDACTED].

CONCLUSIONS OF LAW

22. 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).

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

24. 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 is contingent 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).

25. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. Bd. of Educ. v. Rowley, 458 U.S. 176, 205-06 (1982). Among other protections, parents are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to 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 the student. 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

26. In Rowley, 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 a FAPE. 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 FAPE, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 (2d Cir. 2012); Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 (2007).

27. To satisfy the IDEA's substantive requirements, school districts must provide all eligible students with a FAPE, which is defined as:

[S]pecial education services that -
(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity

with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

28. The central mechanism by which the IDEA ensures a FAPE for each child is the development and implementation of an IEP. 20 U.S.C. § 1401(9)(D); Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 368 (1985). The IEP must be developed in accordance with the procedures laid out in the IDEA, and must be reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. Andrew F. v. Douglas Cty. Sch. Bd., 137 S. Ct. 988, 991 (2017).

29. Turning to the issue of placement, the IDEA mandates that:

To the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a)(5)(A). "Educating a handicapped child in a regular education classroom . . . is familiarly known as 'mainstreaming.'" Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1039 (5th Cir. 1989). Courts have acknowledged, however, that the IDEA's strong presumption in favor of mainstreaming must be weighed against the importance of providing an appropriate education to ESE students. See Briggs v. Bd. of Educ., 882 F.2d 688, 692 (2d Cir. 1989).

30. In evaluating whether an IEP places a student in the [REDACTED], a [REDACTED] is applied:

First, we ask whether education in the [REDACTED], with the use of [REDACTED], can be [REDACTED]. If it cannot and school intends to provide special education or [REDACTED], we ask, second, whether the school has [REDACTED]

Greer v. Rome City Sch. Dist., 950 F.2d 688, 696 (11th Cir. 1991) (internal citation omitted); L.B. v. Nebo Sch. Dist., 379 F.3d 966, 976 (10th Cir. 2004); Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1048 (5th Cir. 1989).

31. To determine whether a child with disabilities can be

[REDACTED] and [REDACTED], several factors may properly be considered:

(1) whether the school district has made [REDACTED]; (2) the educational benefits available to the child in a regular class, [REDACTED], as compared to the benefits provided in a special education class; and (3) [REDACTED] the education of the other students in the class.

P. v. Newington Bd. of Educ., 546 F.3d 111, 120 (2d Cir. 2008) (quoting Oberti v. Bd. of Educ., 995 F.2d 1204, 1217-18 (3d Cir. 1993)).

32. Here, School A made reasonable efforts, as detailed in the above findings of fact, [REDACTED] [REDACTED]. Despite these efforts, the student is [REDACTED]. In [REDACTED], when the student [REDACTED], [REDACTED] on IEP goals was [REDACTED], and [REDACTED] educational [REDACTED] were being met. The totality of the evidence establishes that the [REDACTED] opinion of the educators on the IEP team is correct: the student's [REDACTED] [REDACTED], at this [REDACTED], remains the separate ESE classroom at School C. This placement includes [REDACTED] the student to the [REDACTED], at a school which is capable of implementing the IEP.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the student's [REDACTED] [REDACTED] is a [REDACTED] in a [REDACTED].

DONE AND ORDERED this 3rd day of May, 2018, in Tallahassee,
Leon County, Florida.

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JESSICA E. VARN
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of May, 2018.

ENDNOTES

^{1/} To the extent that there is conflict in the testimony as to the disclosures made by the parents in the early stages of registering the student at School A, the undersigned credits the testimony provided by the School Board witnesses. Similarly, the student's parents' testimony that School A had promised to amend the IEP placement to a general education setting is not found credible; the undersigned finds the testimony provided by School A staff and other School Board witnesses to be consistent and credible.

^{2/} A [REDACTED] classroom is entirely different from a classroom [REDACTED].

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).