

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████)
)
Petitioner,)
)
vs.) Case No. 12-0414E
)
MIAMI-DADE COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, an expedited due process hearing was held in this case on February 29, 2012, by video teleconference with connecting sites in Miami and Tallahassee, Florida, before Errol H. Powell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Mary C. Lawson, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 430
Miami, Florida 33132

STATEMENT OF THE ISSUE

The issue for determination is whether the Child should have a change of placement to an interim alternative educational setting.

PRELIMINARY STATEMENT

On January 24, 2012, the School Board received a request for an expedited due process hearing (Expedited DPH Request) from the Parent of the Child disagreeing with and challenging the School Board's decision to administratively assign the Child to an alternative educational site, in lieu of expulsion. The School Board filed the Parent's Expedited DPH Request on January 26, 2012, with the Division of Administrative Hearings.

On February 3, 2012, the School Board filed a Motion to Dismiss, Or in the Alternative, Notice of Insufficiency. The School Board's motion was denied. As to the Notice of Insufficiency, a request for an expedited due process hearing is not required to meet the criteria of sufficiency; and, as a result, a determination of insufficiency was denied.

The parties agreed to scheduling the expedited due process hearing beyond the 20-school day requirement, due to extenuating circumstances. The 20-school day hearing requirement was extended up to and including February 29, 2012.

The expedited due process hearing was noticed to commence at 9:00 a.m. The Parent and the School Board were provided written notice of the scheduled hearing.

The School Board, through its counsel, and its witnesses appeared at the connecting video teleconference site in Miami, Florida. However, the Parent failed to appear either in person

or through counsel or any other authorized representative. This Administrative Law Judge delayed the commencement of the hearing for approximately 30 minutes, before going on the record, to afford an opportunity for the Parent to appear. The School Board presented no evidence on the ground that the Parent had the burden of proof.

FINDINGS OF FACT

1. No evidence was offered at the expedited due process hearing held in the instant case.
2. Hence, no findings of fact are made.

CONCLUSIONS OF LAW

3. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to sections 1001.42(4)(1) and 1003.57(1), Florida Statutes (2011).
4. Florida Administrative Code Rule 6A-6.03312 provides in pertinent part:

For students with disabilities whose behavior impedes their learning or the learning of others, strategies, including positive behavioral interventions and supports to address that behavior must be considered in the development of their individual educational plans (IEPs). School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements and procedures in this rule, is appropriate for a student with a disability who violates a code of student conduct.

(1) Definitions applicable to discipline of students with disabilities. For purposes of this rule, the following definitions apply:

(a) Change of placement because of disciplinary removals. For the purpose of removing a student with a disability from the student's current educational placement as specified in the student's IEP under this rule, a change of placement occurs when:

1. The removal is for more than ten (10) consecutive school days

* * *

(g) Interim alternative educational setting. An interim alternative educational setting (IAES) is a different location where educational services are provided for a specific time period due to disciplinary reasons and that meets the requirements of this rule.

* * *

(3) Manifestation determination. A manifestation determination, consistent with the following requirements, must be made within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct.

(a) In conducting the review, the school district, the parent, and relevant members of the IEP Team (as determined by the parent and the school district) must:

1. Review all relevant information in the student's file, including any information supplied by the parents of the student, any teacher observations of the student, and the student's current IEP; and

2. Determine whether the conduct in question was caused by, or had a direct and substantial relationship to the student's disability or whether the conduct in question was the direct result of the school district's failure to implement the IEP.

* * *

(d) For disciplinary changes of placement, if the behavior that gave rise to the violation of a code of student conduct is determined not to be a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which they would be applied to students without disabilities, except that services consistent with subsection (5) of this rule must be provided to the student with a disability.

* * *

(5) Free appropriate public education for students with disabilities who are suspended or expelled or placed in an IAES.

* * *

(b) Students with disabilities who are suspended or expelled from school or placed in an IAES must continue to receive educational services, including homework assignments in accordance with Section 1003.01, F.S., so as to enable the student to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the student's IEP and receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.

* * *

(d) If the removal is a change of placement under this rule, the student's IEP Team determines appropriate services under paragraph (b) of this subsection.

* * *

(7) Appeal and Expedited Hearings.

(a) An expedited hearing may be requested:
1. By the student's parent if the parent disagrees with a manifestation determination or with any decision not made by an administrative law judge (ALJ) regarding a change of placement under this rule,

* * *

(c) Expedited due process hearings requested under this subsection shall be conducted by an ALJ for the Division of Administrative Hearings, Department of Management Services, on behalf of the Department of Education, and shall be held at the request of either the parent or the school district regarding disciplinary actions. These hearings must meet the requirements prescribed in Rules 6A-6.03011 through 6A-6.0361, F.A.C., except that the hearing must occur within twenty (20) school days of the date the request for due process is filed and an ALJ must make a determination within ten (10) school days after the hearing. . . .

* * *

(8) Authority of an ALJ. An ALJ hears and makes a determination regarding an appeal and request for expedited due process hearing under this subsection and, in making the determination:

(a) An ALJ may return the student with a disability to the placement from which the student was removed if the ALJ determines that the removal was a violation of this rule

or that the student's behavior was a manifestation of the student's disability; or

(b) Order a change of placement of the student with a disability to an appropriate IAES [Interim Alternative Educational Setting] for not more than forty-five (45) school days if the ALJ determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under this subsection may be repeated, if a school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(9) Student's Placement During Appeals/Expedited Due Process Proceedings. When an appeal under subsection (7) has been made by either the parent or the school district, the student must remain in the IAES determined by the IEP team pending the decision of the ALJ or until the expiration of the time period specified by school personnel, including expulsion for a student where no manifestation was found, unless the parent and the Department of Education or school district agree otherwise.

5. The Parent has the burden of proof (the ultimate burden of persuasion) in this proceeding. Schaffer v. Weast, 546 U.S. 49 (2005).

6. The Parent failed to meet the burden of proof because of the Parent's nonappearance. Consequently, the Parent's challenge to the School Board's decision to administratively assign the Child to an alternative educational setting should be dismissed.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Parent's challenge to the School Board's decision to administratively assign the Child to an alternative educational setting is dismissed.

DONE AND ORDERED this 6th day of March, 2012, in Tallahassee, Leon County, Florida.

S

Errol H. Powell
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of March, 2012.

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)(b), Florida Statutes (2011), 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).