

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████,)
)
Petitioner,)
)
vs.) Case No. 12-0258E
)
MIAMI-DADE COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a due process hearing was held in this case before Jessica E. Varn, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on March 30, 2012, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: ██████████, pro se
(Address of record)

For Respondent: Teddra Joy Gadson, Esquire
Miami-Dade County Public Schools
Suite 430
1450 Northeast Second Avenue
Miami, Florida 33132

STATEMENT OF THE ISSUE

Whether ██████████ requires a one-on-one paraprofessional in order to receive a free appropriate public education (FAPE).

PRELIMINARY STATEMENT

On January 13, 2012, [REDACTED] father filed a Request for Due Process Hearing; the Miami-Dade County School Board (School Board) referred the matter to DOAH on January 17, 2012. The due process hearing was scheduled for March 2, 2012. On January 24, 2012, the School Board filed a Notice of Insufficiency, which was denied on January 31, 2012. On February 2, 2012, the parties agreed to continue and reschedule the hearing; the hearing was rescheduled and held on March 30, 2012.

At hearing, Petitioner presented the testimony of [REDACTED] father, and submitted Petitioner's Exhibits 1 and 2 into evidence. The School Board presented the testimony of Johan Arguelles, Shiara Beers, Roberto Pandolfi, and the expert testimony of Ann Marie Sasseville; School Board Exhibits 1, and 3-10 were admitted into evidence. A Transcript of the hearing was ordered; by agreement of the parties, the time for filing post-hearing submissions was extended to include the time for preparation of the Transcript. The Transcript was filed on April 19, 2012, and, by agreement of the parties, the deadline for the submission of Proposed Final Orders was extended to May 9, 2012. The School Board filed a Proposed Final Order on May 9, 2012; Petitioner filed a Proposed Final Order on May 21, 2012.

FINDINGS OF FACT

1. [REDACTED] is a [REDACTED] child who receives exceptional student education (ESE) services. [REDACTED] is eligible for ESE services because [REDACTED] is a child with autism spectrum disorder, characterized as severe, and has language impairment.

2. [REDACTED] is a student at [REDACTED] Senior High School ([REDACTED] High School), having started as a freshman in September, 2011.

3. An Independent Educational Plan (IEP) dated May 19, 2011, indicates that [REDACTED] can use the restroom independently, and that [REDACTED] parents wanted [REDACTED] to gain as much independence as possible.

4. As one would expect, [REDACTED] transition to high school included some difficulties. [REDACTED] had trouble riding the bus to and from school, and [REDACTED] exhibited some signs of stress at times.

5. On November 16, 2011, after having been a student at [REDACTED] High School for about ten weeks, [REDACTED] motioned to [REDACTED] teacher, Mr. Arguelles, indicating that [REDACTED] needed to use the restroom. The normal routine was followed: Mr. Arguelles walked [REDACTED] to the door of the classroom, opened the door, and watched [REDACTED] enter the restroom, which is about ten to twelve feet away from the classroom. After waiting a few seconds to make sure

████ did not immediately exit the bathroom, Mr. Arguelles returned to his classroom.

6. Approximately eight minutes after he entered the classroom, Mr. Arguelles received a frantic call from a parent who had seen █████ in the school parking lot. Mr. Arguelles sprinted outside, saw █████ standing in the parking lot around ninety yards from a street, and ran to █████. He persuaded █████ to return to the classroom with no problem; █████ was cooperative, and walked back to the classroom with no incident.

7. █████ had never before escaped from the school building; the incident was an isolated event.

8. At the time of the incident, █████ was one of five students in Mr. Arguelles's class, and there were five adults who worked in the classroom. █████ needed and received constant supervision in Mr. Arguelles's class, receiving adult assistance all day.

9. On November 21, 2011, █████ was transferred to Ms. Beers's classroom. On that same date, an interim IEP was written, after a meeting with █████ parents. █████ parents expressed concern over █████ safety, and asked that █████ be continuously supervised. █████ parents requested a one-on-one paraprofessional during this IEP meeting, and believed that the IEP would implement that requested change. The IEP, in fact, was changed to require constant supervision for █████, to ensure

safety. 10. Now in Ms. Beers's classroom, [REDACTED] receives constant supervision, and is not allowed to go anywhere alone. [REDACTED] is one of five students in the class, and there are three adults who work with the students.

11. [REDACTED] is doing well in the classroom, and progressing in [REDACTED] education. Since the change in classroom, and since the change to constant supervision, there have been no troubling incidents involving [REDACTED], and [REDACTED] safety has not been compromised in any manner.

12. While [REDACTED] parents dislike the morning curriculum in [REDACTED] current class, [REDACTED] father recognizes that [REDACTED] is happy in the new classroom, and has progressed.

13. [REDACTED] is currently earning all A's and B's in all classes, and is progressing, with a modified curriculum, on a special high school diploma track. Uncontroverted evidence established that [REDACTED] is benefitting from the instruction being given.

14. The IEP currently in place is designed to provide [REDACTED] with FAPE, the IEP is being properly implemented, and [REDACTED] is receiving FAPE.

15. There is no evidence that [REDACTED] requires a one-on-one paraprofessional in order to receive FAPE.

CONCLUSIONS OF LAW

16. DOAH has jurisdiction over the subject matter. §§ 120.569, 120.57(1), and 1003.57(1), Fla. Stat. (2011); Fla. Admin. Code R. 6A-6.03311(9)(u).

17. In the due process request, Petitioner alleges that without one-on-one paraprofessional assistance, [REDACTED] cannot receive FAPE. Petitioner bears the burden of proving the need for such a service by a preponderance of the evidence. Schaffer v. Weast, 546 U.S. 49 (2005).

18. A parent may file a due process hearing request on any matter "related to the identification, evaluation, or educational placement of a student or the provision of FAPE to the student." Fla. Admin. Code R. 6A-6.03311(9)(a).

19. "FAPE" is defined as:

. . . special education, specially designed instruction, and related services for students. . .that:

1. Are provided at public expense, under the supervision and direction of the local school board without charge to the parent;
2. Meet the standards of the Department of Education;
3. Include preschool, elementary, or secondary programs in the state as applicable; and
4. Are provided in conformity with an individual educational plan (IEP) for

students with disabilities that meet the requirements of Rule 6A-6.03028, F.A.C.,
. . . .

Fla. Admin. Code R. 6A-6.03411(1) (f).

20. "Specially designed instruction" is defined as:

. . . adapting, as appropriate to the needs of an eligible student, the content, methodology, and/or delivery of instruction:

1. To address the unique needs of the student that result from the student's disability or giftedness; and

2. To ensure access of the student to the general curriculum, so that the student can meet the district's expected proficiency levels, as appropriate.

Fla. Admin. Code R. 6A-6.03411(1) (d).

21. "Related Services" are:

. . . transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services and school nurse services, social work services in schools, and parent counseling and training.

Fla. Admin. Code R. 6A-03411(1) (e).

22. It is undisputed that [REDACTED] is an exceptional student with autism and language impairment for whom services under the

IDEA must be provided. 20 U.S.C. § 1415; § 1003.57, Fla. Stat. (2011).

23. The IDEA does not require that school districts maximize each student's potential. If a student progresses in a program, courts should not examine whether another method would produce additional or maximum benefit. Sch. Dist. v. Rowley, 458 U.S. 176, 192, 207-208 (1982); O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233, 144 F.3d 692, 708 (10th Cir. 1998); Evans v. Dist. No. 17, 841 F.2d 824, 831 (8th Cir. 1988).

24. In articulating a standard for determining whether a student is receiving FAPE, the United States Court of Appeal for the Fifth Circuit stated:

[A]n IEP, however, need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him "to benefit" from the instruction. In other words, the IDEA guarantees only a "basic floor of opportunity" for every disabled child, consisting of "specialized instruction and related services which are individually designed to provide educational benefit."

Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 247-48 (5th Cir. 1997), cert. denied, 118 S. Ct. 690 (1998).

25. Here, the IEP as it existed prior to the incident on November 16, 2011, indicated that [REDACTED] could use the restroom independently, and that [REDACTED] parents hoped that [REDACTED] could

gain as much independence as possible. Those directives were followed, but ██████ unfortunately escaped the school building momentarily.

26. Although this incident was an isolated one, the School Board immediately convened the IEP team, and after considering the input from the parents, amended the IEP to address the concern over ██████ safety.

27. Since the amended IEP was implemented, which resulted in a change in classroom and a change to constant supervision, ██████ has been progressing in school, benefitting from the instruction given, and content while at school. ██████ safety has not been compromised since the amended IEP was implemented.

28. The totality of the evidence established that the IEP is designed to provide FAPE to ██████, that the IEP is being appropriately implemented, and that ██████ is receiving FAPE. Since ██████ is progressing in the current program, and therefore receiving FAPE, it is unnecessary to examine whether a one-on-one paraprofessional would produce additional or maximum benefit. Even upon examination, the totality of the evidence establishes that ██████ does not need a one-on-one paraprofessional in order to receive FAPE.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's request for a one-on-one paraprofessional is denied.

DONE AND ORDERED this 24th day of May, 2012, 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
Division of Administrative Hearings
this 24th day of May, 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).