

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████ )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 12-1835E  
 )  
MIAMI-DADE COUNTY SCHOOL BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

SUMMARY FINAL ORDER

The parties being in agreement as to the material facts, this case is before Administrative Law Judge John G. Van Laningham for summary disposition of the disputed question of law pursuant to section 120.57(1)(h), Florida Statutes.

APPEARANCES

For Petitioner: ██████████, parent  
(Address of record)

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

STATEMENT OF THE ISSUE

The issue in this case is whether, as Petitioner alleges, Respondent school district must provide Petitioner special education and related services until June 30, 2013, because Petitioner—whose ██████████ birthday was ██████████—is

entitled to receive such services "until the end of the school year in which [■] turns ■."

PRELIMINARY STATEMENT

On May 14, 2012, Petitioner ■ filed a request for due process hearing, alleging that ■ would be ■ years old on July 5, 2012, and thus is entitled to receive special education and related services "until the end of the 2012-2013 school year that starts July 1st and ends June 30th" pursuant to Respondents policy of providing services until the end of the school year in which the student turns ■. Respondent Miami-Dade County School Board filed Petitioners request for hearing with the Division of Administrative Hearings ("DOAH") on May 18, 2012.

On May 23, 2012, the undersigned scheduled the final hearing for July 2, 2012. The School Board filed a Response and Motion to Dismiss on May 24, 2012, and this was heard, by telephone, on May 29, 2012. During the telephonic hearing, the parties agreed with the undersigned that the material facts of this case were not genuinely in dispute, and that the final decision could be made as a matter of law. The parties were directed to file additional materials, if so inclined, for the undersigneds consideration.

On May 30, 2012, the School Board forwarded to DOAH, for filing in this case, a pleading it deemed an "Amended Due Process Request." Actually, the paper was a Request for Section

504 Due Process Hearing, which [REDACTED] had submitted to the School Board on May 23, 2012. In this request, [REDACTED] presented a claim for relief which is identical to that stated in [REDACTED] original request for hearing, except that instead of demanding that [REDACTED] be allowed to remain in school until June 30, 2013, Petitioner sought to make Respondent "[l]et all the children 21 years old stay in school through the school year were [sic] they turn 22 . . . ."

Although Petitioner had requested this expanded remedy on a form intended to initiate a section 504 hearing—which would be heard by DOAH not as a due process hearing pursuant to Florida Administrative Code Rule 6A-06.03311(9), but as a regular administrative proceeding under sections 120.569 and 120.57, Florida Statutes—[REDACTED] never objected to the School Boards characterization of [REDACTED] pleading as an amendment of [REDACTED] original request for due process hearing, and under the circumstances the undersigned concludes that such an amendment is all Petitioner intended.

The School Board did not object to the amendment, and the undersigned hereby grants Petitioner permission to file it. See Fla. Admin. Code R. 6A-06.03311(9)(h). Petitioner's amended request is deemed filed as of May 30, 2012. The filing of the amended due process request restarted the timelines governing this proceeding. Id. As a result, the deadline for issuing the

final order is reset, to August 13, 2012. See Fla. Admin. Code R. 6A-06.03311(9)(v)6.

On May 31, 2012, the School Board filed its Motion for Summary Final Order. Petitioner filed [REDACTED] response, which is styled "Formal Disclosure of All Evaluations" but in substance is a cross-motion for summary relief, on June 7, 2012. The undersigned considered these papers in preparing this order.

On June 22, the undersigned issued an Order Canceling Hearing, given the absence of disputed facts, which obviated the need for conducting a final hearing on July 2, 2012.

For stylistic convenience, the undersigned will use masculine pronouns in this Summary Final Order when referring to [REDACTED]. The masculine pronouns are not intended to denote [REDACTED] actual gender and should not be understood as doing so.

Unless otherwise noted, citations to the Florida Statutes refer to the 2012 version.

#### FINDINGS OF FACT

1. At all relevant times, Petitioner [REDACTED] was a student in Miami-Dade County, attending a public school. As a student with a disability, [REDACTED] has received special education and related services pursuant to an individual education plan ("IEP"). [REDACTED] has not graduated from high school with a standard diploma. [REDACTED] turned [REDACTED] on [REDACTED].

2. Respondent Miami-Dade County School Board (the "Board") oversees the Miami-Dade County public schools and is responsible for, among many other things, the diagnosis, evaluation, and special instruction of students with disabilities. For clarity and ease of reference, the Board, the Miami-Dade County School District, and their respective personnel will be referred to collectively in this Final Order simply as the "District" unless it is necessary to identify a specific actor.

3. ██████ interim IEP, which is dated May 10, 2012, recommends that ██████ receive extended school year ("ESY") services from June 25, 2012, through July 23, 2012. It is undisputed that ██████ ██████ birthday fell during the 2012 summer session, and that the District will provide ESY services to ██████ in accordance with ██████ IEP until the conclusion of the summer term in which ██████ turned ██████.<sup>1</sup>

4. The Board adopted a 2011-2012 School Calendar, which specified the first and last day of classes for the regular 180-day school year. These were August 22, 2011, and June 7, 2012, respectively. This period will be referred to as the "2011-12 School Year."

5. The Board likewise adopted a 2012-2013 School Calendar, pursuant to which the opening date for the 2012-13 school year is August 20, 2012, and the last day of classes is June 6, 2013. This period will be referred to as the "2012-13 School Year."

CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the subject matter of this proceeding and of the parties pursuant to sections 1003.57(1) (b) and 120.57(1), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9) (u).

7. Congress enacted the Individuals with Disabilities Education Act ("IDEA") to "ensure that all children with disabilities have available to them a free appropriate public education that emphasizes 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); see also Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 523 (2007).

8. Florida has implemented the IDEA. State law requires that "[e]ach district school board shall provide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education . . . ." § 1003.57(1) (a), Fla. Stat.

9. Rule 6A-6.03028(1), adopted by the State Board of Education, provides in pertinent part as follows:

All students with disabilities aged three (3) through twenty-one (21) residing in the state have the right to [a free appropriate public education ("FAPE")] consistent with the requirements of the Individuals with Disabilities Education Act, 20 USC Section 1400, et. seq (IDEA), its implementing

federal regulations at 34 CFR Subtitle B, part 300 et.seq. which is hereby incorporated by reference to become effective with the effective date of this rule, and under Rules 6A-6.03011 through 6A-6.0361, F.A.C.

(Emphasis added).

10. Rule 6A-6.03411(2) provides in relevant part:

For a school district to be eligible to receive state or federal funding for special education and related services for exceptional students, it shall: develop a written statement of policies and procedures for providing appropriate ESE in accordance with and as required by Rules 6A-6.03011 through 6A-6.0361, F.A.C., and as required by Section 1003.57(1)(d) , F.S.; submit its written statement to the Bureau of Exceptional Education and Student Services, Department of Education, 325 West Gaines Street, Tallahassee, Florida 32399-0400; and report the total number of exceptional students in the manner prescribed by the Department. Applicable state statutes, State Board of Education rules, and federal laws and regulations relating to the provision of ESE to exceptional students shall serve as criteria for the review and approval of the procedures documents. This procedures document is intended to provide district and school-based personnel, parents of exceptional students, and other interested persons information regarding the implementation of the States and school districts policies regarding ESE programs.

11. In compliance with the foregoing rule, the District has developed a document entitled Exceptional Student

Education Policies and Procedures (SP&P) ("SP&P"). The SP&P is incorporated in School Board Rule 6Gx13-6A-1.331.

12. Part I, section B, of the SP&P contains the following paragraph:

Ages of Students Served

For students with disabilities who have not graduated with a standard diploma, the district will:



13. Section 1001.42, Florida Statutes, enumerates the powers and duties of a district school board. These include:

(4) ESTABLISHMENT, ORGANIZATION, AND OPERATION OF SCHOOLS.—Adopt and provide for the execution of plans for the establishment, organization, and operation of the schools of the district, including, but not limited to, the following:

\* \* \*

(f) *Opening and closing of schools; fixing uniform date.*—Adopt policies for the opening and closing of schools and fix uniform dates; however, beginning with the 2007-2008 school year, the opening date for schools in the district may not be earlier than 14 days before Labor Day each year.

§ 1001.42(4), Fla. Stat. (emphasis added).

14. Exercising its authority to establish dates for the opening and closing of schools, the Board has adopted Policy

8210, which provides that the "Board shall develop and approve the standard school year calendar . . . ."

15. Pursuant to Policy 8210, the Board developed and approved the School Calendars to which previous reference was made in the Findings of Fact.

16. Petitioner argues that the term "school year," as used in the SP&P provision (quoted above) pertaining to the ages of students served, means the period running from July 1 of one calendar year to June 30 of the next calendar year. (Under Petitioners theory, the "school year" is coterminous with the state fiscal year.) Thus, according to Petitioner, the District must provide services to █████ until June 30, 2013, because \*\* turned █ in the "school year" starting July 1, 2012. This would make █████ eligible to attend classes during the entire 2012-13 School Year.

17. The District, in response, contends that █████ is ineligible to attend classes during the 2012-13 School Year because (a) █ will be █ years old before the opening of schools on August 20, 2012, and (b) the right to FAPE expires at "the end of the school year in which the student turns █." The District understands the term "school year" in this context to mean the standard school year as defined in the School Calendars

the Board adopts pursuant to Policy 8210—not the state fiscal year.<sup>2</sup>

18. For the reasons that follow, the undersigned concludes that the District has the better argument.

19. In support of [REDACTED] position, Petitioner relies upon 20 U.S.C. § 1061(5), which defines the term "school year" to mean "the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following year." Congress enacted this definition, however, for the explicit purpose of implementing a federal program respecting historically Black colleges and universities. Section 1061(5) has no application in this case.

20. Petitioner makes use, as well, of a definition of the term "school year" provided at the Web site of education.com:

For accounting and business purposes, the 12-month period from July 1 to June 30. Also known as fiscal year. Most instructional school years are from 175-180 days long and are spread throughout the months of August to May or June.

See <<http://www.education.com/definition/school-year/>> (accessed July 21, 2012). Although not authoritative, this definition accords with the common understanding of the term "school year" when it is being used—as in the pertinent SP&P provision on ages of students served—to refer to an instructional period. To the extent the education.com definition defines "school year" for "accounting and business purposes," however, it is inapposite,

for the policy in question plainly is not concerned with such purposes. In sum, this definition reinforces the Districts position while adding nothing to Petitioners.

21. Petitioners contention that the drafters of the SP&P intended "school year" to denote the 12-month period from July 1 to June 30—which is more typically referred to as a "fiscal year"—is rejected as contrary to both common usage and shared experience. Simply put, the undersigned doubts that anyone having knowledge of, or experience with, the American public school system would readily understand or typically use the ordinary term "school year" to mean what Petitioner contends it means here. This is because it is well known that children go "back to school" in the fall, and that, some nine or ten months later, at the end of the "school year," school "lets out" for summer vacation. This is part of the rhythm of life in America.

22. Further, section 1001.42(4), Florida Statutes, forbids schools from opening earlier than "14 days before Labor Day." Labor Day is celebrated on the first Monday in September. Thus, the District is not allowed to start a school year on July 1, for that date is always more than 14 days before Labor Day. Petitioners interpretation of the SP&P provision at issue, if applied, would get the District crosswise with section 1001.42(4); there is, however, no basis for concluding that the District intended to disregard this law.

23. The undersigned concludes that, absent a special definition providing otherwise, the term "school year," as ordinarily used and commonly understood (in the United States at least), refers to the period beginning around Labor Day and ending around Memorial Day (the last Monday of May). Thus, the undersigned concludes, as the District persuasively asserts, that the term "school year," as used in the SP&P, means the regular 180-day school year during which students normally attend classes, which is followed by the traditional summer break.

24. █████ turned █ during the summer between the 2011-12 School Year and the 2012-13 School Year. Because █ was currently receiving ESY services when █ turned █, the District agreed that █ could continue receiving services until the end of the 2012 ESY session, which concludes sometime before the beginning of the 2012-13 School Year. █████ right to receive FAPE thus expires at the conclusion of the 2012 ESY summer session. █ is not eligible to enroll in the District school system for the 2012-13 School Year.

#### CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the District shall provide services to █████ in accordance with █ IEP until the conclusion of the 2012 ESY

summer session. After that, [REDACTED] is not entitled to receive special education and related services from the District.

DONE AND ORDERED this 24th day of July, 2012, in Tallahassee, Leon County, Florida.

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JOHN G. VAN LANINGHAM  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of July, 2012.

ENDNOTES

<sup>1/</sup> There is a minor discrepancy between the IEP, which states that the 2012 ESY term ends for [REDACTED] on July 23, 2012, and the Districts Motion for Summary Final Order, which identifies August 1, 2012, as the final day of the 2012 summer session. This conflict is immaterial.

<sup>2/</sup> The District agreed to allow [REDACTED] to complete the 2012 summer session during which [REDACTED] turned [REDACTED] because [REDACTED] IEP authorized the delivery of ESY services. Given that there is no dispute about this, it is unnecessary to decide whether the District was required to let [REDACTED] complete the summer session, which was arguably not part of the standard school year, but also might reasonably be viewed as an extension thereof.

COPIES FURNISHED:

R. M. P.  
(Address of record)

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

Lindsey Granger, Program Director  
Bureau of Exceptional Education  
and Student Services  
Department of Education  
325 West Gaines Street, Suite 614  
Tallahassee, Florida 32399-0400

Alberto M. Carvalho, Superintendent  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 912  
Miami, Florida 33132-1308

Gerard Robinson, Commissioner  
Department of Education  
Turlington Building, Suite 1514  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

Charles M. Deal, General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

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, 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) and Florida Administrative Code Rule 6A-6.03311(9)(w).