

Polk County School District  
No. 04-1760E  
Initiated by: Parent  
Hearing Officer: William F. Quattlebaum  
Date of Final Order: April 24, 2008

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████, )  
)  
Petitioner, )  
)  
vs. ) Case No. 04-1760E  
)  
POLK COUNTY SCHOOL BOARD, )  
)  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER ON COMPENSATORY EDUCATION

On July 11, 2007, an administrative hearing in this case was held in Bartow, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings. The purpose of the hearing was to take additional evidence at the request of the Petitioner on the issue of compensatory education.

APPEARANCES

For Petitioner: Timothy W. Weber, Esquire  
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STATEMENT OF THE ISSUES

Whether the Petitioner is entitled to compensatory education based on the denial of a free and appropriate public education (FAPE), and, if so, what services should be provided to the Petitioner.

PRELIMINARY STATEMENT

This dispute was initially heard by the undersigned Administrative Law Judge on August 17 through 19, 2004. A Final Order was entered on November 10, 2004. The Petitioner appealed the Final Order to the United States District Court, Middle District of Florida, Tampa Division.

On May 3, 2006, by Judgment in W. and J.S., as legal guardians of A.S. v. Polk County School Board, Case No. 8:04-cv-2657-T-24EAJ, the Court remanded the dispute back to the Florida Division of Administrative Hearings (DOAH) for a determination of whether the Petitioner had been denied FAPE by the Polk County School Board (Respondent) during the 2002-2003 and 2003-2004 school years.

A second hearing was conducted, and a Final Order was issued on November 8, 2006, determining that the Respondent had failed to provide FAPE during the 2002-2003 and 2003-2004 school years.

On November 21, 2006, the Court remanded the dispute back to DOAH for consideration of the issue of compensatory education based on the denial of FAPE. Upon consultation with the parties, the Petitioner requested that the record be reopened to take evidence and testimony related to an educational placement that had become available subsequent to the previous hearing. The third hearing was scheduled to accommodate schedules and to provide time for completion of additional discovery related to the placement option.

At the hearing, the Petitioner presented the testimony of two witnesses and had two exhibits admitted into evidence. The Respondent presented the testimony of one witness. An additional witness who had been called by the Respondent was unable to attend the hearing. The record remained open to permit the Respondent to file the anticipated testimony and evidence; but eventually, the Respondent elected not file additional evidence and the record was closed.

The Transcript of this proceeding was filed on July 30, 2007. The Petitioner filed a Proposed Final Order on October 1, 2007. The Respondent filed a Proposed Final Order on October 2, 2007. Both proposed orders were considered in the preparation of this Order, as was the relevant evidence admitted during the course of this dispute. To the extent necessary, the Findings of Fact and Conclusions of Law set forth in the November 8,

2006, Order addressing the matter of FAPE are re-adopted and re-incorporated herein.

FINDINGS OF FACT

1. At all times material to this case, [REDACTED] was a [REDACTED] student (date of birth [REDACTED]) residing in [REDACTED], Florida, and enrolled in the Polk County Public School District.

2. As determined in the previous Order, the Respondent failed to provide FAPE to the Petitioner for the 2002-2003 and 2003-2004 school years.

3. Although the Petitioner graduated and received a regular diploma from the Respondent, there is no credible evidence that the Petitioner made any meaningful progress towards meeting various non-academic Individual Education Plan (IEP) goals during the referenced school years.

4. As stated in previous Orders, the Petitioner was educated alone in a classroom facility segregated from the general school population.

5. Behavioral deficits, including sporadic episodes of explosive and aggressive violence, posed the major impediment to integrating the Petitioner with others in his peer group and in planning post-graduation transition options.

6. In this case, the proper approach to addressing the Petitioner's behavioral deficits requires completion of a functional behavioral assessment and subsequent development of a

therapeutic desensitization program administered by properly trained professionals to counteract and reduce the conduct.

7. There is no credible evidence that the Petitioner's deficits are not amenable to treatment through appropriate methodologies.

8. There is no credible evidence that the Respondent made a reasonable attempt to provide appropriate services designed to address the behaviors.

9. The Respondent failed to implement an appropriate behavioral modification program intended to address the identified behavioral deficits on a consistent basis. In actual practice, the classroom teacher, attempting to avoid triggering inappropriate behaviors, acceded to the Petitioner's decisions on a variety of routine matters, essentially putting the student in charge of the classroom.

10. The classroom teacher failed to collect data related to the specific goals and objectives set forth in the relevant IEPs.

11. The Respondent failed to monitor the data collection process properly and failed to maintain collected data, and thereby, failed to implement the IEPs.

12. The Respondent failed to provide adequate and appropriate services related to development of social skills and

failed to provide opportunities for the Petitioner to interact with students in ■■■ age group.

13. Although there were discussions in IEP team meetings about various tactics intended to integrate the Petitioner with ■■■ peer group, the few ideas for socialization resulting from such discussions were not executed for a variety of reasons.

14. The Petitioner was allowed little routine human interaction during the school day other than with the teacher and the paraprofessional.

15. Various logistical problems (missing facility keys, mismatched schedules, etc.) apparently derailed efforts to take the Petitioner from his classroom to the main high school campus where other students were present. The Petitioner allegedly rejected some ideas, including walking the school track with other students.

16. As was the case with other requirements, the classroom teacher reinforced the student's behavior by consenting to the student's lack of cooperation.

17. While the evidence established that the Petitioner was capable of communicating with others, such communication occurred primarily at the Petitioner's option and not reliably upon the request of the classroom teacher.

18. When the Petitioner chose not to communicate, the classroom teacher, in order to avoid the potential for

aggressive and combative behavior, routinely failed to enforce the requirement.

19. The evidence as to the Petitioner's writing ability demonstrated an ability to perform work, and the Petitioner in fact passed the writing portion of the FCAT, but the Petitioner was generally allowed to decide the manner and form of communication by the classroom teacher, whose apparent goal remained to avoid the potential for inappropriate behavior.

20. Rather than attempt to improve or resolve the behavioral problems, the Respondent concentrated on academic instruction, delivered by the assigned teacher to the Petitioner in the segregated classroom.

21. During the February 2004 IEP team meeting, the Petitioner's parents requested that the diploma option be changed from a regular diploma to a "special" diploma. Had the Respondent agreed to change the diploma track, the Petitioner would have been entitled to receive services until [REDACTED] 22nd birthday under federal law.

22. Although several members of the IEP team believed that the regular diploma track was inappropriate for the Petitioner, the transition specialist at the team meeting prevented the team from engaging in discussing the issue.

23. There is no credible evidence that the IEP team seriously considered the request before rejecting it.

24. The IEP team advised the parents at the IEP meeting that they had no control over the issue of the Petitioner's graduation and declined to change the diploma track.

25. The evidence suggests that the decision to graduate the student at the end of the 2003-2004 school year was predetermined and was made by persons other than the members of the IEP team, a procedural violation that resulted in a denial of FAPE. It should be noted that the proposed IEP being considered at the February 2004 team meeting had been reviewed by legal counsel for the school board prior to the team meeting, a relatively unusual occurrence.

26. The team deleted the previous IEP goals towards which there had been no progress, thereby clearing the way to "graduate" the Petitioner from the system when the few remaining required academic credits to obtain the diploma were awarded.

27. By refusing to alter the diploma option and by deleting the unmet IEP goals, the team prevented the Petitioner from receiving services to which [REDACTED] was entitled and which were clearly necessary for the Petitioner to benefit from the academic instruction that had been delivered.

28. The February 2004 IEP meeting was not the first time that the Petitioner's parents had expressed concern over the lack of progress made toward the non-academic goals of the IEP. At least a year earlier, the parents learned that the Petitioner

would graduate and "exit the system" once the academic credits were earned. The parents asked that the academic progress be slowed and that the focus be shifted towards the goals upon which little to no progress was being made, but the request went unheeded.

29. The Respondent's clear goal was to award sufficient academic credits to graduate the student from the school system with a "regular" diploma regardless of whether other services were adequately delivered.

30. The Respondent failed to identify appropriate transition services in the relevant IEPs and failed to provide such services to the Petitioner.

31. The Respondent asserted that the lack of available transition services was related to the Petitioner's behavioral deficits. In reality, the transition services provided to the Petitioner were marginal and unsuccessful primarily because the behavioral deficits were not properly addressed by the Respondent.

32. By the end of the 2003-2004 school year, the Petitioner had earned sufficient academic credits to receive a regular diploma. The benefit of the credential was essentially nil due to the Respondent's failure to adequately attend to the Petitioner's behavioral deficits and the lack of transition planning.

33. It is reasonable to presume that the Respondent, given knowledge of the behavioral deficits which by all accounts posed the major impediment to the Petitioner's post-graduation transition, recognized that the diploma to be awarded to the Petitioner would be of little practical value.

34. The Respondent has asserted that any requirement to provide compensatory educational services to the Petitioner include consideration of post-graduation services provided to the Petitioner from August 2005 to March 2006. The post-graduation services were provided by the Respondent upon Order of the Federal District Court issued during the appeal of this dispute.

35. The evidence fails to establish that such post-graduation services were of such significance as to relieve the Respondent from the obligation to provide compensatory education or to reduce the intensity of such services to be provided. There is no credible evidence that any major IEP goals were met during this period.

36. It is clear from the testimony of Willie Saenz, the teacher who worked with the Petitioner during the relevant period, that the Petitioner began making communication and behavioral progress during the referenced period; however, the crucial significance of the evidence is that the Petitioner made progress when provided appropriate services. It is reasonable

to presume that progress could have been made during the Petitioner's regular education had the appropriate services been provided.

37. The Respondent's failure to provide appropriate services prior to the post-graduation period with Mr. Saenz suggests that the Respondent was unwilling to provide appropriate services to the Petitioner until ordered to do so by the Court.

38. The Petitioner offered evidence as to the suitability of the [REDACTED] School, an affiliate of [REDACTED] ([REDACTED]). [REDACTED] is a national provider of educational services to a range of special needs students. The [REDACTED] School is a relatively new facility located in Polk County, Florida, that offers a program for students with autism based on existing programs developed by ESA for such students.

39. At the request of the Petitioner, the [REDACTED] School fashioned a proposed educational program relevant to the Petitioner's identified deficits.

40. The program includes a functional behavioral assessment, development of a behavioral intervention plan, and development of an IEP designed to address the deficits in social skills, communication, independent living skills, and suitable transition services. The plan also includes additional academic

services relative to the deficits, as well as collection of relevant data.

41. Personnel at the [REDACTED] School receive training in the appropriate response to extreme aggression through de-escalation techniques, with the ultimate goal of substituting suitable conduct for the aggression.

42. The typical tuition at the [REDACTED] School is approximately \$22,000 annually. Approximately 20 students with autism attend the school in three classrooms segregated by age.

43. The [REDACTED] School principal stated that he could not admit the Petitioner into the school at the typical tuition level.

44. The proposed program created for the Petitioner would be administered by a teacher and a paraprofessional specifically assigned to work with the Petitioner in a segregated classroom.

45. The cost of the program specifically proposed for the Petitioner is approximately \$119,000 annually, reflecting the assignment of the teacher and paraprofessional.

46. The Respondent has previously stated that it would cost approximately \$144,000 annually for the Respondent to provide an assigned teacher and paraprofessional in an isolated classroom setting; accordingly, the [REDACTED] School cost projection appears to be reasonable.

47. Neither the [REDACTED] School nor the Respondent's estimated costs include cognitive and behavioral therapy, which would result in additional costs to both providers. There is no evidence that the cost for such services would be significantly different as to either provider.

48. The Respondent offered no credible evidence that the [REDACTED] School would not be an appropriate placement for the Petitioner.

49. The evidence establishes that the Respondent is unable or unwilling to provide the compensatory education services to which the Petitioner is entitled under this Order. This finding is based on: the Respondent's failure to provide adequate services during the years referenced herein, the Respondent's failure to collect or maintain data related to IEP goals, and the apparent predetermined outcome of the February 2004 IEP meeting, including the refusal of the IEP team to alter the diploma track to address the previous IEP goals for which no progress had been made and the deletion of such unmet goals from the IEP.

50. At the hearing, the Respondent offered evidence that the principal of the [REDACTED] School was formerly employed as a principal at a Polk County public school and that the employment had been terminated for falsification of post-graduate academic credentials.

51. Review of the disciplinary action indicated that the matter essentially involved the purchase of a post-graduate degree from an unaccredited institution. The ultimate objective of the acquisition was to obtain an increase in salary on the basis of the degree.

52. There is no evidence that the [REDACTED] School principal would be directly involved in the provision of any services to the Petitioner. The principal's employment history is immaterial to this dispute.

#### CONCLUSIONS OF LAW

53. As set forth herein, the Division of Administrative Hearings has jurisdiction over the parties to and the specific subject matter of this proceeding. See Judgment in a Civil Case, Case No. 8:04-cv-2657-T-24EAJ, United States District Court, Middle District of Florida, Tampa Division, May 3, 2006, and the November 21, 2006, Order on the issue of compensatory education.

54. The Individuals with Disabilities Education Act, 20 U.S.C. Section 1400, et seq. (IDEA), provides the right of all disabled children to a FAPE.

55. The IDEA defines "free appropriate public education" at 20 U.S.C. Section 1401(9) as follows:

The term "free appropriate public education" means special education and related 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, or secondary school education in the State involved, and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

56. The issue addressed in this Order is whether, and to what extent, the Petitioner is entitled to receive compensatory educational services based upon the denial of FAPE.

57. The United States Supreme Court has held that in order to satisfy its duty to provide a FAPE, a school board must provide "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." Jefferson County Bd. of Ed. v. Breen., 853 F.2d 853, 856 (11th Cir. 1988), citing Hendrick Hudson Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 203 (1982). "It would do little good for Congress to spend millions of dollars in providing access to a public education only to have the handicapped child receive no benefit from that education." Id. at 200-01.

58. The Respondent failed to provide FAPE to the Petitioner. In this case, there is little evidence that any

educational benefit was received by the Petitioner during the 2002-2003 and 2003-2004 school years.

59. The Respondent's failure to provide FAPE was not the accidental result of inadequate educational planning. It is clear that the Respondent was either unable or unwilling to provide the appropriate services to which the Petitioner was entitled.

60. During the 2003-2004 school year, the Respondent's focus was the result of an apparent decision by the Respondent to "graduate" the Petitioner from the school system regardless of whether the appropriate services had been provided.

61. The obvious example of the Respondent's determination to move the Petitioner out of the school system was the rejection (with little discussion) of the parents' suggestion that the "regular" diploma track was inappropriate for their child and the simultaneous deletion of goals from the February 2004 IEP towards which there had been no measurable progress.

62. The ultimate result was the award of a "regular" diploma to the Petitioner that had no apparent value. The Petitioner was completely unprepared for transition into an independent adult existence, and it is simply not possible to imagine that the Respondent thought otherwise.

63. An award of compensatory services to the Petitioner is the appropriate remedy. The Respondent must bear the expense of

the private compensatory educational services to which the Petitioner is entitled. Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275 (11th Cir. 2008); Sch. Bd. Of Lee County v. E.S., 2007 U.S. Dist. LEXIS 96642 (M.D. Fla. August 27, 2007), citing Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309, 1312 (11th Cir. 2003).

64. The evidence establishes that the Petitioner is entitled to receive compensatory educational services for up to five years. The compensatory education period includes the 2002-2003 and 2003-2004 school years addressed in the previous Order, and the three additional years for which services would have been available after graduation and prior to the 22nd birthday. See 20 U.S.C. § 1412(a)(1)(A); Fla. Admin. Code R. 6A-6.0331.

65. The evidence establishes that the program of compensatory educational services proposed by the [REDACTED] School and preferred by the Petitioner is an appropriate placement for the provision of the services.

66. Although it would be inappropriate for this Order to assign the specific program elements and therapies to be provided to the Petitioner, the program must be designed to address the identified behavioral deficits, as well as socialization and communication issues, and must be consistently implemented and directed by persons with appropriate training.

67. In order to address the behavioral deficits that pose the major impediment to the Petitioner's transition from high school, the program should include therapeutic elements based on completion of an appropriate functional behavioral analysis by trained professionals with expertise in the Petitioner's disability.

68. The professionals tasked with delivery of services must collect relevant data on a frequent and routine basis. The program must designate one individual to be responsible for monitoring data collection. Collected data must be maintained and available for review by relevant professionals and by the Petitioner's parents. The person charged with the responsibility for monitoring data shall communicate with the Petitioner's parents on a regular basis. Modification of the program must be based upon review of the data, in addition to any other relevant factors.

69. The program should be delivered in the least restrictive classroom environment appropriate in light of the Petitioner's behavioral issues and should ideally include opportunities for interaction with other students on a regular basis with such opportunities increasing based on reduction of behaviors.

70. The program should also include transition planning, including occupational or vocation training, appropriate to the

Petitioner's interests and abilities and with due regard to the results of behavioral services. The transition planning must be monitored and modified in accordance with the outcome of the services being provided, in order to reflect any improvement or deterioration in the exhibition of inappropriate behaviors.

71. To the extent that provision of additional academic services would facilitate and promote the development of social or communication skills, confirm previously established intellectual abilities, or assist in the provision of appropriate transition efforts, academic services may be a part of the program; however, this Order should not be interpreted to require that additional specific academic services beyond those previously provided to the Petitioner.

72. The Respondent shall bear the expense of the [REDACTED] School program up to \$144,000 annually exclusive of non-included therapeutic services as stated herein and adjusted as required to accommodate regular cost increases. The Respondent shall further bear the expense of all additional therapeutic services beyond those identified in the [REDACTED] School proposal that are directly or indirectly required to address behavioral deficits and to implement transition services.

FINAL ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is determined that the Petitioner is entitled to receive compensatory education as set forth herein.

DONE AND ORDERED this 24th day of April, 2008, in Tallahassee, Leon County, Florida.

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WILLIAM F. QUATTLEBAUM  
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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- a) brings a civil action within 30 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] or
- b) brings a civil action within 30 days in the appropriate state circuit court pursuant to Section 1415(i)(2)(A) of the IDEA and Section 1003.57(1)(e), Florida Statutes; or
- c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(1)(e) and 120.68, Florida Statutes.