

Miami-Dade County School District
No. 05-4429E
Initiated by: Parent
Hearing Officer: J. D. Parrish
Date of Final Order: February 28, 2006

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████,)	
)	
Petitioner,)	
)	
vs.)	Case No. 05-4429E
)	
MIAMI-DADE COUNTY SCHOOL BOARD,)	
)	
Respondent.)	
_____)	

FINAL ORDER

Pursuant to notice a formal hearing was held on January 11, 2006, by video teleconference with the parties appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Laura E. Pincus, Esquire
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite 400
Miami, Florida 33132

STATEMENT OF THE ISSUE

The issue in this matter is whether the Petitioner is no longer eligible for the exceptional student education (ESE) program; or, stated in the affirmative, should the Petitioner be dismissed from the ESE program?

PRELIMINARY STATEMENT

This case was initiated by the parent, ■■■, on behalf of her ■■■, ■■■, a student enrolled within the Miami-Dade County School District. The student is eligible for ESE services and has received an educational assignment based upon a classification as severely emotionally disturbed (SED). The parent has requested that the student be dismissed from the SED program and that ■■■ be reassigned to regular classes. The formal request for a due process hearing was filed on December 6, 2005.

Following a conference with the parties, and with the stipulation of all, the hearing was scheduled for January 11, 2006. All parties were duly notified and attended the due process hearing. At the hearing, the Respondent, Miami-Dade County School Board (Respondent), offered testimony from Robin Morrison, an instructional supervisor for SED programs; Arlene Exelbert, an instructional supervisor for the Respondent's region IV schools; Leslie Collier, a school psychologist; and Sandra Tilton, an ESE teacher at ■■■ School. The Petitioner

testified on [REDACTED] own behalf. The Respondent's Exhibits 1-6 were received in evidence.

A transcript of the proceedings was not filed. The parties were directed to file proposed orders within 10 days of the hearing. The Respondent timely filed a Proposed Final Order that has been considered in the preparation of this Final Order. The Petitioner did not file a proposal.

FINDINGS OF FACT

1. At all times material to the allegations of this case, the Respondent was a duly constituted School Board charged with the responsibility to operate, control and to supervise the public schools within the Miami-Dade County, Florida public school district. As such, pursuant to federal and state law, the Respondent is responsible for providing a free appropriate public education (FAPE) to its ESE students.

2. At all times material to this case, the Petitioner, [REDACTED], was an ESE student enrolled at [REDACTED] School. The Petitioner is a 15-year-old and is in the ninth grade.

3. [REDACTED] School contains an SED setting where this Petitioner receives math, science, social studies, intensive math and intensive reading. Petitioner also receives instruction in math computation, math application, frustration tolerance, anger management skills and conforming behaviors.

4. Because the Petitioner has participated in an ESE program for a number of years, ■■■ has attended numerous meetings to resolve and plan for this Petitioner's educational needs. Part of the effort to secure a FAPE requires that the parties draft an individualized education plan (IEP) for this student at least annually. The IEP identifies the student's goals and sets standards to measure ■■■ achievement. Typically a team of persons familiar with the Petitioner's record and academic needs convenes to draft the IEP. This IEP team along with the parent then attempt to craft an educational plan tailored to meet the Petitioner's needs.

5. The last annual IEP team met to draft a plan for this student in September. That IEP, dated September 9, 2005, was to be in effect until September 9, 2006.

6. The IEP specifies that the Petitioner will have a paraprofessional to assist ■■■ with all ■■■ classes. ■■■ also is offered counseling on a weekly basis.

7. The Petitioner requires and receives transportation to and from school and an aide is provided for that travel time.

8. Among the goals cited by the IEP, the Petitioner is to seek "assistance when confronted with a difficult task or situation." Further, the Petitioner is to "remove ■■■self from a situation or setting when upset or frustrated independently without leaving school premises." The Petitioner is to be "able

to follow school and classroom rules on a daily basis with minimal redirection adhering to code of student conduct."

Finally, the IEP directed the Petitioner to "communicate [REDACTED] feelings in an appropriate manner by using proper tone of voice and maintaining physical boundaries."

9. As to all of the foregoing goals, the Petitioner has fallen short of achieving success. In fact, several incidents of inappropriate behaviors have demonstrated that the Petitioner continues to have poor impulse and anger control. The Petitioner has been the subject of suspensions that were determined to be a manifestation of the student's disability. Consequently, additional, not fewer, behavioral interventions have been attempted. These manifestation decisions have, in effect, shielded the Petitioner from more harsh consequences. The Petitioner and [REDACTED] do not seem to appreciate the full import of these decisions.

10. Moreover, the Petitioner does not fully accept the fact that [REDACTED] behavior must change before any modifications to [REDACTED] educational program would be likely. For example, the Petitioner announced that when faced with the options of remaining quiet or voicing [REDACTED] displeasure regarding some offensive comment or behavior of another person that [REDACTED] must speak out.

11. The Petitioner's mother does not have confidence in the [REDACTED] School staff. [REDACTED] believes [REDACTED] is entitled to attend a regular class setting and that to require [REDACTED] to remain in the SED program is unfair. The mother does not, however, have any information to support her contention that the student is capable of controlling [REDACTED] impulses sufficiently so that [REDACTED] would receive any educational benefit in a regular classroom setting.

12. The mother has also failed to authorize counseling for the Petitioner. The Petitioner did not represent that [REDACTED] is currently taking any prescribed medications designed to address [REDACTED] impulsivity or aggressive demeanor.

13. All assessments unequivocally support the continuance of the Petitioner within the SED program.

14. The Petitioner continues to be oppositional and defiant. [REDACTED] struggles with verbal and aggressive behaviors and is unsuccessful in communicating with peers and teachers who challenge [REDACTED] autonomy. The Petitioner is not able to manage [REDACTED] anger.

15. Except for the Petitioner's stated desire to return to a regular classroom setting, there is no evidence in this record to suggest that the Petitioner would be able to succeed in that environment.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.57(1), and 1003.57(5), Fla. Stat. (2005).

17. The Petitioner bears the burden of proof in this cause. See Schaffer v. Weast, 126 S. Ct. 528; 105 LRP 55797 (2005). The Petitioner has argued that ■■■ is entitled to dismissal from the SED program. ■■■ has not met ■■■ burden of persuasion. To the contrary, the Respondent has demonstrated that in order for this Petitioner to achieve a FAPE ■■■ must remain in the SED program.

18. In order to be dismissed from the SED program the Petitioner would need to demonstrate that ■■■ is able to control ■■■ aggressive and defiant behaviors. ■■■ would need to show that ■■■ is able to interact appropriately with peers and teachers. ■■■ has not done so; in fact, just the opposite has been demonstrated. The Petitioner has not followed ■■■ IEP consistently, has not learned anger management, and continues to intimidate others who disagree with ■■■. If the Petitioner were to establish a consistent behavior and appropriate demeanor ■■■ could be re-evaluated and could become eligible for review. To date, ■■■ has not done so.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the request of the Petitioner to be dismissed from the SED program be denied.

DONE AND ORDERED this 28th day of February, 2006, in Tallahassee, Leon County, Florida.

S

J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of February, 2006.

COPIES FURNISHED:

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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(5), Florida Statutes; or
- c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(5) and 120.68, Florida Statutes.