

Holmes County School District  
No. 06-1602E  
Initiated by: Parent  
Hearing Officer: Ella Jane P. Davis  
Date of Final Order: July 14, 2006

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 06-1602E  
 )  
HOLMES COUNTY SCHOOL BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

Before the Division of Administrative Hearings (DOAH) is Petitioner ██████████'s request for Due Process Hearing against Respondent, Holmes County District School Board, which was filed on May 3, 2006, pursuant to 20 U.S.C. § 1415 et seq., the Individuals With Disabilities Education Act (IDEA) and 42 U.S.C. § 12132 et seq., Title II of the Americans With Disabilities Act (ADA).<sup>1/</sup>

The parties mediated this cause and reached an agreement at the end of that process. However, due to the confidentiality provisions of the mediation process/agreement and their mutual preference for a final order entered by DOAH, the parties,

through their respective legal counsel, have stipulated to the following Statement of the Issues, Findings of Fact, and Conclusions of Law.

STATEMENT OF THE ISSUES

1. Whether [REDACTED] is entitled to a final order directing school officials to develop and implement at public expense an Individualized Education Plan (IEP) protecting [REDACTED] from alleged constant bullying by other students, including a teacher escort during transitions from one classroom to another, no physical education class, and removal of the bullies from [REDACTED]'s assigned classroom; or alternatively, home-schooling to be provided by a certified ESE teacher;

2. Whether [REDACTED] is entitled to a final order directing school officials to tutor [REDACTED] in reading and mathematics during physical education class periods;

3. Whether [REDACTED] is entitled to a final order directing school officials to tutor [REDACTED] in reading during the summer breaks;

4. Whether [REDACTED] is entitled to attorney's fees and costs; and

5. Whether [REDACTED] is receiving a free and appropriate public education (FAPE).

FINDINGS OF FACT

1. [REDACTED] is a third grade student at [REDACTED] located in [REDACTED], Holmes County, Florida.
2. [REDACTED] suffers from severe Attention Deficit Hyperactivity Disorder (ADHD), Sensory Integration Dysfunction, and Asperger's Syndrome. As a result, [REDACTED] has been placed in the Exceptional Student Education (ESE) program at [REDACTED]. [REDACTED]'s initial placement date in ESE was August 5, 2002, and [REDACTED] is currently enrolled therein.
3. [REDACTED] meets the essential eligibility requirements for receipt of ESE services and participation in ESE programs.
4. On April 17, 2003, another student called [REDACTED] a "loser."
5. On or about November 6, 2003, another student pushed [REDACTED] into a brick wall.
6. On April 17, 2004, another student pushed [REDACTED] during physical education.
7. On April 26, 2005, [REDACTED]'s parent discussed bullying issues at an IEP meeting.
8. On September 21, 2005, another student pushed [REDACTED] down on the ground causing a break in [REDACTED]'s wrist and/or arm.
9. [REDACTED] did not attend classes from part of the day on September 21, 2005, through approximately November 28, 2005, but



Cir. 2006); M.L. v. Federal Way School District, 394 F.3d 634 (9th Cir. 2005); Shore Reg'l High School Bd. Of Educ. v. P.S., 381 F.3d 194 (3rd Cir. 2004).

ORDER

Upon consideration of the parties' stipulations to issues, facts, law, and decretal paragraphs,<sup>2/</sup> it is ORDERED:

1. This Order does not include any claim ██████ may have for money damages based on an incident on September 21, 2005, in which ██████'s wrist and/or arm was broken on school property or any other alleged incidents of alleged bullying, physical abuse, or discrimination.

2. In addition, Respondent, Holmes County District School Board, shall pay ██████'s attorney's fees of \$1,660.00 and costs of \$11.26, and ██████ by and through ██████'s natural guardian, shall execute a release in favor of Respondent, Holmes County District School Board, releasing it from all claims under the IDEA that ██████ may have and has raised in ██████ Request for Due Process Hearing.

3. Respondent, Holmes County District School Board, shall implement the following procedures to establish an IEP that will provide a FAPE for ██████

a) Set up training for teachers who work with students on the effects of "bullying"; set up a program to address bullying with ESE students no later than August 2006; identify specific programs that will be used with teachers and students by July 1, 2006, and

the training and curriculum content of such programs will include but will not be limited to "Empathy Training," "Bully Proofing the Schools," and Social Skills Training; all school personnel who have immediate responsibility for [REDACTED] will, in the first month of the school year, assure that he is closely monitored (behavioral); if the teacher observes or becomes aware of other students bullying [REDACTED] the teacher will immediately report the incident to the principal, parent, and district ESE office in writing; and if [REDACTED]'s parent becomes aware of other students bullying [REDACTED] [REDACTED]'s parent will immediately notify the principal in writing and the principal will investigate the report, meet with [REDACTED]'s teacher, and report back to [REDACTED]'s parent his or her findings, and this report will be in writing;

b) Reading and math will be addressed by a certified teacher (ESE) during the morning of the regular school day. At least ninety (90) minutes for reading and forty-five (45) minutes for math will be provided. The reading program will be developmental in nature and the curriculum used will be SRA reading and math as well as other supplemental materials. The delivery will be provided in small groups and individualized;

(c) During the school year, reading and math tutoring will be provided to [REDACTED] by a paraprofessional and monitored by an ESE classroom teacher. The instruction will be twenty (20) minutes a day for three days per week in lieu of P.E.;

(d) During the summer, tutoring will be provided six (6) to eight (8) hours per week during the summer session. The tutoring will be at a school site. It will be provided by a certified special education

teacher. The tutoring will be in the areas of reading and math, and will be individualized;

(e) A plan will be put in place that will start in Fall 2006 that will ensure that keyboarding will be taught to [REDACTED] and used in [REDACTED]'s everyday class work. An occupational specialist will assist the classroom teacher in implementing the plan;

and

(f) At a minimum of once a week during the school year the special class teacher will communicate with [REDACTED]'s [REDACTED] regarding [REDACTED]'s progress. Minimally, the progress report will include [REDACTED]'s behavior that week, [REDACTED]'s academic growth in reading and math and any other areas of interest agreed upon by the parent and the teacher. In addition, the teacher will provide, on a monthly basis, a report on [REDACTED]'s growth during the month in the areas addressed above.

DONE AND ORDERED this 14th day of July, 2006, in Tallahassee, Leon County, Florida.

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ELLA JANE P. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of July, 2006.

ENDNOTES

<sup>1/</sup> Absent a Section 120.65, Florida Statutes, contract between the School Board and DOAH, DOAH does not have jurisdiction over § 504 of the ADA, and no such contract exists here. No ADA claims are adjudicated here.

<sup>2/</sup> These paragraphs only acknowledge the parties' mediation agreement and their stipulations herein.

COPIES FURNISHED:

Eileen L. Amy, Administrator  
Exceptional Student Education Program  
Administration and Quality Assurance  
Department of Education  
325 West Gaines Street, Suite 614  
Tallahassee, Florida 32399-0400

Holly Dineman, Esquire  
Coppins & Monroe, P.A.  
Post Office Drawer 14447  
Tallahassee, Florida 32317-4447

David B. Switalski, Esquire  
Cox & Burns, P.A.  
122 South Calhoun Street  
Tallahassee, Florida 32301

Steve Griffin, Superintendent  
Holmes District School Board  
701 East Pennsylvania Avenue  
Bonifay, Florida 32425

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.