Miami-Dade County School District
No. 06-2343E
Initiated by: Parent
Hearing Officer: Stuart M. Lerner
Date of Final Order: August 14, 2006

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted],	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 06-2343E
	)	
MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

Pursuant to notice, a due process hearing was conducted in this case pursuant to Section 1003.57(5), Florida Statutes,[1] on August 11, 2006, by video teleconference at sites in Miami and Tallahassee, Florida, before Stuart M. Lerner, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: [redacted] Parent
(address of record)

For Respondent: Laura E. Pincus, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 400
Miami, Florida 33132

STATEMENT OF THE ISSUE

Whether reassigning [redacted] from [redacted] Elementary School to [redacted] Elementary School, as the Miami-Dade County School Board proposes to do, would constitute a change in educational placement depriving [redacted] of a free appropriate public education.

PRELIMINARY STATEMENT

On June 30, 2006, the Miami-Dade County School Board (School Board) received a request for a due process hearing from [redacted]'s mother, [redacted] The request was written in Spanish (on a School Board form). On July 3, 2006, the School Board sent the due process hearing request, along with an English translation of the request, to the Division of Administrative Hearings (DOAH). The translation read as follows:

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>
> I do not desire that they change my [redacted] to another school due to the fact that [redacted] attends a special class for Autism and has progressed. In addition, [redacted] does not adapt to changes and it may adversely affect [redacted] in [redacted] academic and social progress.
>
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>
> We are requesting for [redacted] to continue [redacted] studies at [redacted] Elementary School.

On July 10, 2006, the School Board filed a Motion to Dismiss, arguing:

> The request for due process is legally insufficient in that it does not state a cause of action upon which relief can be granted. In the alternative, the request

> for due process is legally insufficient as it fails to identify any fundamental change between the program at [redacted] Elementary School and [redacted] Elementary School and, therefore, fails to meet the standards set forth in [the Individuals with Disabilities Education Act (IDEA)].

On July 14, 2006, the undersigned issued an Order Denying Respondent's Motion to Dismiss, in which he gave the following explanation for his ruling:

> Pursuant to 20 USCS § 1415(b)(7)(A)(ii) (of the IDEA) a due process hearing request must include:
>
> "(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;
>
> (II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;
>
> (III) a description of the nature of the problem of the child relating to such proposed initiation or change [of the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child], including facts relating to such problem; and
>
> (IV) a proposed resolution of the problem to the extent known and available to the party at the time."
>
> A review of the due process hearing request filed in the instant case reveals that it meets the requirements of 20 USCS § 1415(b)(7)(A)(ii) (albeit, just barely) and

> "state[s] a cause of action upon which relief can be granted." A transfer from one school to another may, under certain special circumstances, constitute the type of "change" that is subject to challenge under the IDEA in a due process proceeding. See AW v. Fairfax County School Board, 372 F.3d 674, 682 (4th Cir. 2004)("[W]here a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in 'educational placement' occurs."); and Hill v. School Board of Pinellas County, 954 F. Supp. 251, 253 (M.D. Fla. 1997), aff'd, 137 F.3d 1355 (11th Cir. 1998)("Because [redacted] IEP did not change upon [redacted] transfer to Countryside, [redacted] remains in the 'then current educational placement' for the purposes of the IDEA and, therefore, no change in [redacted] educational placement occurred. (However, this Court does not dismiss as implausible the prospect of circumstances under which attributes of an institution, a location, a teacher-student relationship, or the like, might become so pronounced and valuable to the student and his or her IEP, that a change in the school is tantamount to a change in the IEP . . . ."). The parent has alleged in her due process hearing request that such special circumstances exist in the instant case in that her ..... "does not adapt to changes" and, consequently, [redacted] transfer from [redacted] Elementary School "may adversely affect [redacted] in ..... academic and social progress." These allegations are sufficient to allow the parent to go forward. Accordingly, Respondent's Motion to Dismiss is hereby DENIED.

On July 26, 2006, after having receiving input from the parties regarding their dates of availability, the undersigned set the due process hearing in this case for Friday, August 11, 2006. Later that same day, the undersigned held a pre-hearing conference with the parties by telephone conference call. During the pre-hearing conference, the parties requested that, inasmuch as the new school year would be starting on Monday, August 14,

2006, the undersigned render his final decision in this matter, orally, at the conclusion of the evidentiary portion of the due process hearing on August 11, 2006, and, as soon as practicable after the hearing, prepare and issue a final order memorializing his decision (without the benefit of proposed final orders from the parties). The undersigned indicated that he would do what the parties had requested.

As noted above, the due process hearing in this case was held, as scheduled, on August 11, 2006 (the parties' efforts to amicably resolve the instant controversy prior thereto having been unsuccessful). Two witnesses, Ann Marie Sasserville, Ph.D., and [redacted] testified at the hearing. In addition to the testimony of these witnesses, a total of seven exhibits (Petitioner's Exhibits 1 through 5, and Respondent's Exhibits 1 and 2) were offered and received into evidence.

Immediately following the conclusion of the evidentiary portion of the due process hearing, the parties presented closing arguments. The undersigned then, orally, on the record, announced his final decision in this case, which is memorialized in this Final Order.

FINDINGS OF FACT

Based on the evidence adduced at the due process hearing, and the record as a whole, the following findings of fact are made:

1. [redacted] is an autistic child who resides in Miami-Dade County. [redacted] will be [redacted] years of age on [redacted] of this year. This coming school year[redacted] will be going into the [redacted] grade.

2. [redacted] has attended Miami-Dade County public schools since September 2004, and has received special education and related services (as a student with autism), in a self-contained classroom with other autistic children), since October 2005.

3. [redacted] entered the Miami-Dade County public school system as a [redacted] student at [redacted] Elementary School [redacted] In November 2004, when [redacted] family moved to another part of Miami-Dade County outside [redacted]'s attendance zone, [redacted] transferred from [redacted] to [redacted] [redacted] [redacted] changed schools again in October 2005, when [redacted] transferred from [redacted] to [redacted] [redacted] School [redacted] upon being deemed eligible to receive special education and related services. [redacted] remained at [redacted] for the duration of the school year. This past summer, [redacted] attended school at [redacted] [redacted] School.

4. Although [redacted] transferred to [redacted] after the school year had started, the transfer did not have any lasting, adverse educational effect. In fact, [redacted] did exceptionally well, both academically and behaviorally, at [redacted] during the 2005-2006 school year. [redacted] final report card for the school year reveals that, except for one "B," [redacted] final grades were all "A"s.

5. During the 2005-2006 school year, there was a "critical space shortage" at [redacted] about which parents had complained. To alleviate overcrowding at [redacted] and to get "students closer

to their neighborhood schools," the School Board has decided, for the 2006-2007 school year, to "mov[e]" 17 of the 35 autistic students who were in self-contained classrooms at [redacted] during the 2005-2006 school year, along with an appropriate number of [redacted] instructional and support staff, to other schools, including [redacted] Elementary School [redacted]

6. Under the School Board's plan, [redacted] will be receiving "two [lower grade classroom] units" from [redacted] These "units" will be, "in all critical areas," substantially identical to those at [redacted] except that they will be housed in a larger space.

7. [redacted] is among the 17 autistic students that the School Board has decided to "mov[e]" from [redacted] to another school. The School Board wants to "mov[e]" [redacted] to [redacted] which is not [redacted] neighborhood school, but is closer to [redacted] home than [redacted], and is the closest school that is able to serve [redacted] needs.

8. [redacted] will have the same educational program at [redacted] as [redacted] had at [redacted] While the location where [redacted] receives services from the School Board will change, the services (which are set forth in [redacted] Individual Education Plan (IEP) and are reasonably calculated to provide [redacted] with meaningful education benefit) will not.

9. Like most autistic children, [redacted] does not have an easy time making transitions; however, while [redacted] may initially have some difficulty adapting to [redacted] new surroundings, there is no reason to believe, particularly in light of [redacted] accomplishments

following [redacted] transfer to [redacted] that [redacted] transferring to [redacted] will result in [redacted] not receiving meaningful educational benefit from the services provided by the School Board.

CONCLUSIONS OF LAW

10. District school boards are required by the Florida K-20 Education Code,[2] to "[p]rovide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable." §§ 1001.42(4)(l) and 1003.57, Fla. Stat.

11. "Exceptional students," as that term is used in the Florida K-20 Education Code, are students who have been "been determined eligible for a special program in accordance with rules of the State Board of Education." The term includes students who are autistic. § 1003.01(3), Fla. Stat.

12. The Florida K-20 Education Code's imposition of the requirement that "exceptional students" receive special education and related services is necessary in order for the State of Florida to be eligible to receive federal funding under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et. seq., as recently amended (IDEA),[3] which mandates, among other things, that participating states ensure, with limited exceptions, that "[a] free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including

children with disabilities who have been suspended or expelled from school." 20 U.S.C. § 1412(a)(1); cf. Agency for Health Care Administration v. Estabrook, 711 So. 2d 161, 163 (Fla. 4th DCA 1998)("[A] state that has elected to participate [in the Medicaid program], like Florida, must comply with the federal Medicaid statutes and regulations."); Public Health Trust of Dade County, Florida v. Dade County School Board, 693 So. 2d 562, 564 (Fla. 3d DCA 1996)("The State of Florida elected to participate in the Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (1994), which provides federal funds to states for the purpose of providing medical assistance to needy persons. However, once the State of Florida elected to participate in the Medicaid program, its medical assistance plan must comply with the federal Medicaid statutes and regulations"; held that where a Florida administrative rule is in direct conflict with federal Medicaid statutes and regulations, the federal Medicaid law governs); and State of Florida v. Mathews, 526 F.2d 319, 326 (5th Cir. 1976)("Once a state chooses to participate in a federally funded program, it must comply with federal standards.").

13. Under the IDEA, a "free appropriate public education" consists of "special education" and, when necessary, "related services." See 20 U.S.C. § 1401(9)("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 school, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 614(d)"). "Special education," as that term is used in the IDEA, is defined as

> specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including--

> (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
>
> (B) instruction in physical education.

20 U.S.C. § 1401(29). The term "related services," as used in the IDEA, is defined as:

> transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

20 U.S.C. § 1401(26)(A).

14. To meet its obligation under Sections 1001.42(4)(l) and 1003.57, Florida Statutes, to provide an "appropriate" public education to each of its "exceptional students," a district school board must provide "personalized instruction with 'sufficient supportive services to permit the child to benefit from the instruction.'" Hendry County School Board v. Kujawski, 498 So. 2d 566, 568 (Fla. 2d DCA 1986), quoting from,

Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 188 (1982); see also § 1003.01(3)(b), Fla. Stat. ("'Special education services' means specially designed instruction and such related services as are necessary for an exceptional student to benefit from education. Such services may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; job placement; orientation and mobility training; braillists, typists, and readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials, assistive technology devices, and other specialized equipment; and other such services as approved by rules of the state board."). The instruction and services provided must be "'reasonably calculated to enable the child to receive educational benefits.'" School Board of Martin County v. A. S., 727 So. 2d 1071, 1073 (Fla. 4th DCA 1999), quoting from, Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. at 207. As the Fourth District Court of Appeal further stated in its opinion in School Board of Martin County, 727 So. 2d at 1074:

> Federal cases have clarified what "reasonably calculated to enable the child to receive educational benefits" means. Educational benefits provided under IDEA must be more than trivial or de minimis.

> J. S. K. v. Hendry County Sch. Dist., 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Dep't of Educ., 915 F.2d 651 (11th Cir. 1990). Although they must be "meaningful," there is no requirement to maximize each child's potential. Rowley, 458 U.S. at 192, 198, 102 S. Ct. 3034. The issue is whether the "placement [is] appropriate, not whether another placement would also be appropriate, or even better for that matter. The school district is required by the statute and regulations to provide an appropriate education, not the best possible education, or the placement the parents prefer." Heather S. by Kathy S. v. State of Wisconsin, 125 F.3d 1045, 1045 (7th Cir. 1997)(citing Board of Educ. of Community Consol. Sch. Dist. 21 v. Illinois State Bd. Of Educ., 938 F.2d at 715, and Lachman v. Illinois State Bd. Of Educ., 852 F.2d 290, 297 (7th Cir. 1988)). Thus, if a student progresses in a school district's program, the courts should not examine whether another method might produce additional or maximum benefits. See Rowley, 458 U.S. at 207-208, 102 S. Ct. 3034; O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233, No. 97-3125, 144 F.3d 692, 709 (10th Cir. 1998); Evans v. District No. 17, 841 F.2d 824, 831 (8th Cir. 1988).

see also M. M. v. School Board of Miami-Dade County, 437 F.3d 1085, 1102 (11th Cir. 2006)("[U]nder the IDEA there is no entitlement to the 'best' program.").

15. Pursuant to 34 C.F.R § 300.552 (with which Florida district school boards must comply), "[i]n determining the educational placement of [an exceptional student, the district school board] shall ensure that . . . the [t]he child's placement . . . [i]s as close as possible to the child's home."

As the Fourth Circuit Court of Appeals pointed out in AW v. Fairfax County School Board, 372 F.3d 674, 682 (4th Cir. 2004), "this language does not mandate that the student be assigned the closest school, but simply one that is as 'close as possible.'" Placement at a neighborhood school may not be "possible" if the school does not have the services the student needs. The IDEA does not require the district school board to equip the student's neighborhood school to meet the student's needs. Rather, the district school board is free to offer the services the student requires at some other location, notwithstanding that this location may be some distance from the student's home, provided that the distance would not have the effect of rendering the student unable to receive meaningful educational benefit from the services offered. That district school boards have wide discretion in these matters was made clear in White ex rel. White v. Ascension Parish School Board, 343 F.3d 373, 380-82 (5th Cir. 2003), wherein the Fifth Circuit Court of Appeals stated the following:

> The question then becomes whether Ascension was otherwise required by the IDEA to defer to the Whites' wishes that their son be transferred, along with his support services, to the neighborhood school. The Whites point to two main provisions that they contend support neighborhood school selection: (1) the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home, 34 C.F.R. § 300.552(b)

(emphasis added); and (2) unless the IEP requires some other arrangement, the child is educated in the school that he or she would attend if not disabled, 34 C.F.R. § 300.552(c).

Regarding these provisions, their qualifying language is critical. 34 C.F.R. § 300.552(b) only requires that the student be educated as close as possible to the child's home. 34 C.F.R. § 300.552(c) specifies that the child is educated in the school he would attend if not disabled unless the IEP requires some other arrangement. Here, it was not possible for Dylan to be placed in his neighborhood school because the services he required are provided only at the centralized location, and his IEP thus requires another arrangement.

Of course, as the Whites point out, neighborhood placement is not possible and the IEP requires another arrangement only because Ascension has elected to provide services at a centralized location. This is a permissible policy choice under the IDEA. Schools have significant authority to determine the school site for providing IDEA services.

"State agencies are afforded much discretion in determining which school a student is to attend . . . . The regulations, not the statute, provide only that the child be educated 'as close as possible to the child's home.' However, this is merely *one of many factors* for the district to take into account in determining the student's proper placement. It must be emphasized that the proximity preference or factor is not a presumption that a disabled student attend his or her neighborhood school."

Flour Bluff, 91 F.3d at 693-94 (emphasis added). In *Flour Bluff,* a deaf child's parents objected to her attending a centralized program rather than her

neighborhood school. Our court held in favor of the school:

"IDEA expressly authorizes school districts to utilize regional day schools such as the one at issue here, and we think the importance of these regional programs is obvious. Undoubtedly there are a limited number of interpreters, speech pathologists with backgrounds in deaf education, and deaf education teachers; and by allocating these limited resources to regional programs, the state is better able to provide for its disabled children. Additionally, by placing these educators at regional centers, those centers are better able to provide further training for those educators and make substitutions for absent educators."

Id. at 694 (citations omitted).

All of our sister circuits that have addressed the issue agree that, for provision of services to an IDEA student, a school system may designate a school other than a neighborhood school. Restated, no federal appellate court has recognized a right to a neighborhood school assignment under the IDEA. *See, e.g.,* McLaughlin v. Holt Public Sch. Bd. of Educ., 320 F.3d 663, 672 (6th Cir. 2003)(LRE provisions and regulations do not mandate placement in neighborhood school); Kevin G. by Robert G. v. Cranston Sch. Comm., 130 F.3d 481, 482 (1st Cir. 1997)("[W]hile it may be preferable for Kevin G. to attend a school located minutes from [redacted] home, placement [where full-time nurse located] satisfies [the IDEA]. . . . The school district has an obligation to provide a school placement which includes a nurse on duty full time, but it is not required to change the district's placement of nurses when, as in this case, care is readily available at another easily accessible school".); Hudson v. Bloomfield Hills Public Sch., 108 F.3d 112 (6th Cir. 1997)(IDEA does not require

placement in neighborhood school); Urban v. Jefferson County Sch. Dist. R-1, 89 F.3d 720, 727 (10th Cir. 1996)(IDEA does not give student a right to placement at a neighborhood school); Murray v. Montrose County Sch. Dist., 51 F.3d 921, 928-29 (10th Cir.) (no presumption in IDEA that child must attend neighborhood school--proximity to home only one factor), cert. denied, 516 U.S. 909, 116 S. Ct. 278, 133 L.Ed. 2d 198 (1995); Schuldt ex rel. Schuldt v. Mankato Indep. Sch. Dist. No. 77, 937 F.2d 1357, 1361-63 (8th Cir. 1991)(school may place student in non-neighborhood school rather than require physical modification of the neighborhood school to accommodate the child's disability); Barnett v. Fairfax County Sch. Bd., 927 F.2d 146 (4th Cir.) (school district complied with IDEA by providing deaf student with "cued speech" program in a centralized school approximately five miles farther than neighborhood school), cert. denied, 502 U.S. 859, 112 S. Ct. 175, 116 L.Ed. 138 (1991); Wilson v. Marana Unified Sch. Dist. No. 6 of Pima County, 735 F.2d 1178 (9th Cir. 1984) (school district may assign child to school 30 minutes away because teacher certified in child's disability was assigned there, rather than move the service to the neighborhood school).

Administrative agency interpretations of the regulations confirm that the school has significant authority to select the school site, as long as it is educationally appropriate. The Office of Special Education Programs (OSEP), the Department of Education branch charged with monitoring and enforcing the IDEA and its implementing regulations, has explained:

"[I]f a public agency . . . has two or more equally appropriate locations that meet the child's special education and related services needs, the assignment of a particular school . . . may be an

administrative determination, provided that the determination is consistent with the placement team's decision."

Letter from Office of Special Education Programs to Paul Veazey (26 Nov. 2001). See also, e.g., Letter to Anonymous, 21 IDELR 674 (OSEP 1994)(it is permissible for a student with a disability to be transferred to a school other than the school closest to home if the transfer school continues to be appropriate to meet the individual needs of the student); Letter to Fisher, 21 IDELR 992 (OSEP 1994) (citing policy letter indicating that assignment of a particular location is an administrative decision).

The Whites insist that 1997 amendments to the IDEA enlarged parents' role. Nevertheless, the amendments do not state--and the Whites do not cite any post-amendment authority for the proposition--that parents may alter a school's good faith policy decision regarding site selection. Moreover, the 2001 OSEP letter (interpreting the current version of the IDEA) is contrary to the Whites' position.

The Whites also urge that there is simply no reason the transliterator cannot move to Dylan's neighborhood school, because she provides services only for Dylan. Again, our task is not to question educational policy decisions; rather, it is to determine whether state and local officials have complied with the IDEA. This principle is unquestionably applicable here:

"Whether a particular service or method can feasibly be provided in a specific special education setting is an administrative determination that state and local school officials are far better qualified and situated than are we to make."

Barnett, 927 F.2d at 152.

16. [redacted] is undisputedly an "exceptional student" entitled to receive a free appropriate public education from the School Board. In dispute in the instant matter is whether [redacted] proposed reassignment from [redacted] to [redacted] would constitute a change in educational placement depriving [redacted] of the free appropriate public education to which [redacted] is entitled.

17. Parents who have "complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" under the IDEA must "have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency." 20 U.S.C. § 1415(f).

18. A change in the location of where services are delivered ordinarily does not constitute a change in "educational placement" subject to challenge in an "impartial due process hearing." See AW, 372 F.3d at 682 ("[T]he touchstone of the term 'educational placement' is not the location to which the student is assigned but rather the environment in which educational services are provided."); Weil v. Board of Elementary & Secondary Education, 931 F.2d 1069, 1072 (5th Cir. 1991)("We are not persuaded that the cited notice provisions were mandated in the instance of Kimberly's transfer from Cooley to Kiroli because that transfer did not constitute a

change in 'educational placement' within the meaning of 20 U.S.C. § 1415(b)(1)(C). The programs at both schools were under OPSB supervision, both provided substantially similar classes, and both implemented the same IEP for Kimberly. We conclude that the change of schools under the circumstances presented in this case was not a change in 'educational placement' under section 1415."); Concerned Parents & Citizens for the Continuing Education at Malcolm X (P.S. 79) v. The New York City Board of Education, 629 F.2d 751, 753-54 (2d Cir. 1980)("[T]he term 'educational placement' refers only to the general type of educational program in which the child is placed. So construed, the prior notice and hearing requirements of s. 1415(b) would not be triggered by a decision, such as that made by the Board in this case, to transfer the special education classes at one regular school to other regular schools in the same district."); and Hill by & Through Hill v. School Board of Pinellas County, 954 F. Supp. 251, 253 (D. Fla. 1997), aff'd, 137 F.3d 1355 (11th Cir. 1998)("In the typical case, educational placement means a child's educational program and not the particular institution where that program is implemented. Because [redacted] IEP did not change upon [redacted] transfer to Countryside, [redacted] remains in the 'then current educational placement' for the purposes of the IDEA and, therefore, no change in [redacted] educational placement occurred."). "[W]here a change in location results in a dilution

of the quality of a student's education or a departure from the student's LRE-compliant setting [however], a change in 'educational placement' occurs." AW, 372 F.3d at 682; see also Hill, 954 F. Supp. at 253 ("[T]his Court does not dismiss as implausible the prospect of circumstances under which attributes of an institution, a location, a teacher-student relationship, or the like, might become so pronounced and valuable to the student and his or her IEP, that a change in the school is tantamount to a change in the IEP . . . .").

19. In Florida, by statute, a DOAH administrative law judge must conduct the "impartial due process hearing" to which a complaining parent is entitled under the IDEA. § 1003.57(5), Fla. Stat.

20. "The burden of proof in [a due process hearing] is properly placed upon the party seeking relief." Schaffer v. Weast, 126 S. Ct. 528, 537 (2005); see also West Platte R-II School District v. Wilson, 439 F.3d 782, 784 (8th Cir. 2006)("[T]the burden of proof in an IDEA case lies with the party initiating the challenge to the Individualized Education Plan (IEP)."); and Devine v. Indian River County School Board, 249 F.3d 1289, 1292 (11th Cir. 2001)("In the present case, because it is the parents who are seeking to attack a program they once deemed appropriate, the burden rests on the parents in this IEP challenge.").

21. In the instant case, [redacted] requested an "impartial due process hearing" to air her complaints about the School Board's proposed reassignment of [redacted] from [redacted] to [redacted]

22. The evidence adduced at the "impartial due process hearing" held pursuant to [redacted]'s request fails to establish that this reassignment would "result[] in a dilution of the quality of [redacted] education or a departure from the [redacted] LRE-compliant setting," or would otherwise deprive [redacted] of any right to which [redacted] is entitled under the IDEA or Sections 1001.42(4)(l) and 1003.57, Florida Statutes. In short, there was no showing made that there are special or unique circumstances present in this case that would distinguish it from the typical school transfer case, which, as noted above, involves, not a change in educational placement, but rather a mere change in the location of the delivery of services that, unlike a change in educational placement, is not reviewable in an "impartial due process hearing."

23. In view of the foregoing, [redacted]'s due process hearing request challenging [redacted]'s transfer from [redacted] to [redacted] is hereby DISMISSED.

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

S

STUART M. LERNER
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 August, 2006.

ENDNOTES

[1] All references to Florida Statutes in this Final Order are to Florida Statutes (2005).

[2] Chapters 1000 through 1013, Florida Statutes, are known as the "Florida K-20 Education Code." § 1001.01(1), Fla. Stat.

[3] "The IDEA was recently amended by the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647 (2004). The amendment did not take effect until July 1, 2005 . . . ." M. T. V. v. Dekalb County School District, 446 F.3d 1153, 1157 n.2 (11th Cir. 2006).

COPIES FURNISHED:

[redacted],
(address of record)

Laura E. Pincus, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 400
Miami, Florida 33132

Rudolph F. Crew, Ed.D.,
Superintendent of Schools
Miami-Dade County Schools
1450 Northeast 2nd Avenue
Miami, Florida 33132

Daniel J. Woodring, General Counsel
Department of Education
1244 Turlington Building
325 West Gaines Street
Tallahassee, Florida 32399-0400

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

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 IDEA; 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.