Miami-Dade County School District
No. 06-2396E
Initiated by: Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: August 30, 2006

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted],	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 06-2396E
	)	
MIAMI-DADE COUNTY SCHOOL BOARD,	)	
	)	
Respondent.	)	
_____	)	

FINAL ORDER

Pursuant to notice, a final hearing in this case was held on July 31, 2006, via video teleconference at sites in Miami and Tallahassee, Florida, before Florence Snyder Rivas, 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 Petitioner's transfer from the school [redacted] attended in [redacted] grade to [redacted] neighborhood school for [redacted] grade would constitute a change in educational placement depriving [redacted] of a free appropriate public education (FAPE).

PRELIMINARY STATEMENT

By request for due process hearing form (petition) filed on behalf of Petitioner (Petitioner or [redacted]) by [redacted], [redacted]. [redacted] Petitioner sought a due process hearing to challenge an administrative decision by Respondent Miami-Dade County School Board (Respondent or School Board) to transfer Petitioner from the school [redacted] attended in [redacted] grade to [redacted] neighborhood school for [redacted] grade. Petitioner contends that the transfer would constitute a change in educational placement depriving [redacted] [redacted]

The petition was duly-filed with Respondent Miami-Dade County School Board (Respondent, School Board, or school district) on that July 6, 2006. The petition was transmitted on July 7, 2006, to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the hearing.

On July 10, 2006, the School Board filed a motion to dismiss. [redacted] filed a response on Petitioner's behalf on July 14, 2006. By order dated July 14, 2006, the School Board's motion to dismiss was denied.

Under applicable law, Petitioner is entitled to rendition of a final order no later than 75 days following the filing of the

petition, except where requests for specific extension(s) of time are made and granted by the tribunal. The 75-day deadline contemplates a 30-day period in which a mandatory resolution session shall be held to determine if agreement can be achieved without the necessity of a formal hearing. In this case, Petitioner insisted that this tribunal render a decision no later than 35th day following the filing of the petition, which was the last business day prior to the August 14, 2006, commencement of the 2006-2007 school year. Although Petitioner's position was without legal merit, the tribunal nevertheless deemed it appropriate to expedite this case beyond the requirements of law. The School Board waived objection.

A resolution session on July 18, 2006, ended in impasse, and the final hearing went forward as scheduled on July 31, 2006, the 23rd day following the filing of the petition. At the conclusion of the hearing, it was agreed that the tribunal would conduct the record review and attendant research, and thereafter convene a telephone conference at the parties' mutual convenience to communicate the substance of its factual and legal determinations, and would thereafter issue a written order memorializing the decision. The parties were offered and declined the opportunity to request a date certain for rendition of the written order.

No transcript of the proceedings and no post-hearing submissions have been provided.

On August 4, 2006, the 28th day following the filing of the petition, the referenced telephone conference call was

conducted, and the parties advised that Petitioner's claim for relief was denied. The parties were further advised of the legal and factual basis for the ruling. This final order is dated and rendered August 30, 2006, the 60th day following the filing of the petition, and the 30th day following the end of the resolution session period.

Throughout this final order, references to statutes are to Florida Statutes (2006).

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. [redacted] resides at all relevant times in Miami-Dade County, Florida. [redacted] turns [redacted] on [redacted], and at the time of the final hearing was a rising [redacted] grader.

2. [redacted] is enrolled in Respondent's exceptional student education (ESE) program with eligibility as autistic; specific(ly) learning disabled; and language impaired. As such, it is Respondent's legal obligation to provide Petitioner with FAPE.

3. ESE services are delivered to [redacted]. and to others similarly situated pursuant to an Individual Education Plan (IEP). [redacted] participated actively in the preparation of [redacted] 2006-2007 IEP (current IEP)as well as [redacted] previous IEPs. [redacted] does not

dispute that the current IEP is reasonably calculated to provide meaningful education benefit to [redacted]

4. The assignment of particular students to particular schools is administrative in nature and is generally committed to the discretion of school district(s). Respondent, as a matter of course, assigns all students to their neighborhood schools unless the student's needs cannot be met at the neighborhood school. In most such cases, the student will be assigned to the school closest to home which is capable of meeting [redacted] needs. All requests to assign a student to a district school which is not [redacted] neighborhood school must be reviewed and approved by administrative staff.

5. ESE students are more likely than general education students to be administratively assigned to a school other than their neighborhood school. This is so because they are entitled to have their IEPs implemented and there is often a shortage of appropriately credentialed professionals and other necessary resources to do so at their neighborhood school. While Respondent is unable to implement every IEP in every neighborhood school in every year, Respondent reasonably presumes that an ESE student's IEP should be implemented as close to [redacted] home as possible.

6. At all relevant times, [redacted] was closer to [redacted] home than [redacted] also has a neighborhood school which is closer to [redacted] home than [redacted]. [redacted]. was not assigned to either school during [redacted] grade for one reason only: neither school offered an educational

program for children with autism and related disabilities; therefore, neither could implement [redacted] IEP. [redacted] attended [redacted] grade at [redacted] where [redacted] IEP was successfully implemented. Although [redacted] was Petitioner's third school in as many years, [redacted] transitioned successfully. [redacted] was well-satisfied with Petitioner's academic and behavioral progress at [redacted]

7. In 2005-2006, Petitioner was one of 35 autistic students enrolled at [redacted]. There was growing concern by professional staff that the classroom space at [redacted] was inadequate relative to the size of its autistic population. In order to alleviate overcrowding and to provide for anticipated growth, Respondent made an administrative decision to provide a program for autistic children at a second [redacted] school. [redacted] was the location selected to house the program. The program was to be substantially similar to the program provided at [redacted].

8. The inaugural class at [redacted]was to be comprised of approximately half of [redacted] autistic population. A like percentage of qualified staff was to be relocated from [redacted] to [redacted].

9. [redacted] and all other parents whose autistic children were assigned to [redacted] in the 2005-2006 school (the [redacted] parents) received reasonable notice that Respondent was making preparations to assign about half of [redacted] autistic population to [redacted] and to implement their IEPs at that location. The [redacted] parents were afforded reasonable opportunity to provide input regarding which students should be assigned to [redacted]. Respondent

recognized that those students selected to remain at [redacted] as well as those assigned to [redacted] faced a period of transition. Though not required to do so, Respondent offered special services for [redacted] autistic population in order to minimize any real or perceived negative impacts of such transition. At all relevant times, [redacted] has rejected such services, and has insisted to Respondent, to family and friends, and to Petitioner [redacted], that Petitioner will regress at [redacted].

10. Petitioner's current IEP can be implemented at [redacted] and at [redacted]. Taking into account all relevant facts and circumstances, and giving due weight to parental preference and to the unique needs of [redacted] autistic population, Respondent made an administrative decision that Petitioner would be among those assigned to [redacted].

11. The decision was within Respondent's authority and has not been shown to be unreasonable or to constitute a denial of FAPE. [redacted] offers an advantage to Petitioner which [redacted] cannot--proximity to Petitioner's home. Respondent's experience is that students benefit when they are educated as close to home as possible. This is particularly likely to be true where, as here, the educational program provided at the school closest to home is, in every material respect, identical to the program in which the student succeeded at a more remote location. With commuting distance between home and school reduced, students are afforded time they would otherwise lack to do homework and to participate in after school programs, clubs, and community activities. In these settings, students have opportunity to develop friendships

and attachments close to home. They have more time to sleep and rest.

12. Petitioner presented no evidence, persuasive or otherwise, suggesting that [redacted] is possessed of attributes without which [redacted] cannot receive FAPE. There is no evidence of any factor peculiar to [redacted] which suggests that [redacted] current IEP can be implemented only at [redacted].

13. Instead, against the overwhelming weight of persuasive evidence, [redacted]. offers only her opinion that Petitioner cannot receive FAPE at [redacted]. It is puzzling why [redacted]lacks faith in Petitioner's ability to transition to [redacted]. Based upon [redacted] successful transition to [redacted], as well as [redacted] performance under the 2005-2006 IEP, the record strongly suggests that with proper encouragement and support, Petitioner will transition successfully to [redacted] and will achieve the goals set forth in [redacted] current IEP.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.57(1) and 1003.57(5), Florida Statutes.

15. To prevail, Petitioner must prove by a preponderance of the evidence that a transfer from [redacted] to [redacted] would constitute a change in educational placement depriving [redacted] of FAPE.

Schaffer v. Weast, 126 S. Ct. 528, 537 (2005). Petitioner has failed to meet this burden.

16. District school boards are required by the Florida K-20 Education Code, 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.

17. More particularly, Respondent is obligated to provide to Petitioner and to students similarly situated "personalized instruction with 'sufficient supportive services to permit [the student] 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. . . ."). 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 . . . must be more than trivial or de minimis. (citations omitted) 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." (citations omitted) 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. (citations omitted).

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

18. Likewise, there is no legal basis upon which this tribunal can impose upon Respondent an obligation to implement Petitioner's IEP at the particular location [redacted] prefers, absent extraordinary circumstances which have not been shown to exist here. Accordingly, the petition is dismissed and the relief sought therein DENIED.

DONE AND ORDERED this 30th day of August, 2006, in

Tallahassee, Leon County, Florida.

S

_____

Florence Snyder Rivas
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of August, 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.