

Miami-Dade County School District
No. 06-2391E
Initiated by: Parent
Hearing Officer: J. D. Parrish
Date of Final Order: September 6, 2006

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████,)	
)	
Petitioner,)	
)	
vs.)	Case No. 06-2391E
)	
MIAMI-DADE COUNTY SCHOOL BOARD,)	
)	
Respondent.)	
_____)	

FINAL ORDER

Pursuant to notice a formal hearing was held in this case on August 10, 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, o/b/o
the student
(Address of record)

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

STATEMENT OF THE ISSUE

The central issue in this case is whether the Petitioner's individualized education plan (IEP) must be implemented at [REDACTED] High School.

PRELIMINARY STATEMENT

The Petitioner is a student enrolled in the Miami-Dade County Public Schools. At all times material to this case the Respondent was responsible for providing the student with a free appropriate public education (FAPE). On July 6, 2006, the Petitioner's mother, [REDACTED] filed a Request for Due Process Hearing on behalf of her [REDACTED], [REDACTED]. On July 7, 2006, the request was forwarded to the Division of Administrative Hearings for formal proceedings. The Petitioner's request challenged the placement of the student at a school other than [REDACTED] [REDACTED] High School.

On July 13, 2006, a telephone conference call was conducted with the parties to identify scheduling concerns and to determine the amount of time needed to try the case. At that time the parties announced that a Resolution Conference had been scheduled for July 19, 2006. On July 20, 2006, a second pre-hearing conference was conducted with the parties to confirm a hearing date and to address other matters that might expedite the presentation of evidence in this cause. At that time the parties acknowledged that the Resolution Conference had not resolved the central issue of the case.

At the hearing conducted on August 10, 2006, the Petitioner presented testimony from the student's mother. The Respondent presented testimony from [REDACTED] an assistant principal at [REDACTED] High School; [REDACTED] an assistant principal at [REDACTED] High School; and [REDACTED] a school administrator familiar with the program at [REDACTED] an alternative education program. The Respondent's Exhibits 1, 2, 3, 4, 5, 6, 7, and 8 were admitted into evidence.

At the conclusion of the hearing, the parties represented they would file Proposed Final Orders within the next week. A transcript of the proceeding was not ordered or filed. The request for an expedited ruling on the "stay put" issue for the student was granted. The "stay put" matter was addressed because school started August 14, 2006, and the student needed direction as to where to report for classes. The Order was entered on August 11, 2006.

Thereafter, the parties did not file Proposed Final Orders. This Final Order is being entered within the time-frame calculated by the parties. The parties computed the Final Order to be due no later than September 19, 2006, which is 45 days after the end of the 30-day resolution session. The undersigned represented the Final Order could be entered on or about September 6, 2006.

FINDINGS OF FACT

1. The Petitioner is a [REDACTED]-year-old [REDACTED] student enrolled in the Miami-Dade County Public Schools. Most recently, the student attended [REDACTED] High School pursuant to an Administrative Student Transfer Contract. The student's home school is [REDACTED] High School.

2. This Petitioner is eligible for and entitled to receive exceptional student educational (ESE) services. The Petitioner's most recent IEP setting forth such ESE provisions was dated June 21, 2006. This IEP noted that the student's assigned school for the commencement of the 2006-2007 school year (the current year) would be [REDACTED] is an alternative school that houses students who are involuntarily enrolled there due to disciplinary reasons. The Petitioner's parent has objected to the placement at [REDACTED]. It is the parent's desire that this Petitioner be allowed to attend classes at [REDACTED] School [REDACTED]. The parent did not object to the substantive matters addressed by the Petitioner's IEP.

3. The Respondent recommended that this Petitioner attend [REDACTED] due to the seriousness of the violation with which [REDACTED] was charged. At the time of the hearing, the Petitioner faced criminal charges resulting from the alleged possession of illegal drugs on the [REDACTED] campus. The Petitioner was to have a court appearance regarding this matter on or about August 15, 2006. It is unknown how the criminal proceeding has been resolved.

4. On or about November 29, 2005, the Petitioner was

charged with possession of a controlled substance on the [REDACTED] grounds. It was alleged that the Petitioner took the drug from a "friend" to transport it. The Petitioner was counseled to make better choices and to avoid students or situations that might involve drugs. The criminal charges, if any, were not the subject matter of the most recent reassignment to [REDACTED]

5. The most recent incident occurred on or about May 9, 2006. According to school personnel, the Petitioner had a controlled substance (a bag of prescription pills) hidden in the strap of [REDACTED] backpack. As a result, the Petitioner was arrested and recommended for expulsion from school.

6. According to the most recent school data, [REDACTED] has approximately 3500 students enrolled on its campus; [REDACTED] has 3600 students; and [REDACTED] typically has less than 200 students.

7. The Petitioner's IEP can be implemented at [REDACTED]. There are educational supports at [REDACTED] as well as a full-time psychologist on staff. It is expected that the Petitioner will be able to "earn" [REDACTED] way back to [REDACTED] home school if [REDACTED] successfully completes [REDACTED] school assignment at [REDACTED]. Therefore, once [REDACTED] has demonstrated [REDACTED] will comply with School Board rules and regulations, it is expected that the Petitioner's IEP will be implemented at [REDACTED].

8. It is critical that the Petitioner not revert to past behaviors or associations that might entangle [REDACTED] with students

who possess or sell controlled or illegal drugs.

9. There is no allegation or evidence to support a finding that this student used or uses illegal drugs. The Petitioner's mother believes the student may have been used by other students as a "mule" to deliver drugs. The Petitioner's feelings of increased isolation and difficulties with peer relationships may be contributing to [REDACTED] need for attention (albeit inappropriate attention).

10. This student requires assistance dealing with frustration and stress. This student is easily distracted and needs a lower pupil-to-teacher ratio. The Petitioner requires additional time to master educational objectives. All of these needs can be addressed at [REDACTED] and [REDACTED].

11. Regardless of the foregoing, the Child Study Team recommended additional assessments that the parent has not agreed to allow. Such testing included a social history update; vision, hearing, speech, and language assessments; and a comprehensive evaluation with a school psychologist. To date, those assessments have not been performed. Moreover, the private assessment that the parent procured has not been provided to the school district.

CONCLUSIONS OF LAW

12. 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).

See also Fla. Admin. Code Rule 6A-6.03311.

13. The Petitioner bears the burden of proof in this cause. See Schaffer v. Weast, 126 S. Ct. 528; 105 LRP 55797 (2005).

14. The Respondent is required by the Florida K-20 Education Code to provide 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)(1) and 1003.57, Fla. Stat. (2006).

15. "Exceptional students" as defined by Florida law are students who have been "determined eligible for a special program in accordance with rules of the State Board of Education." The term "exceptional student" includes students with disabilities such as specific learning disabled or emotionally handicapped students. See § 1003.01 (3), Fla. Stat. (2006). The Petitioner is an exceptional student who is eligible for ESE services.

16. In order to be eligible to receive federal funding under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq. (IDEA) states must ensure that exceptional students receive a FAPE. In order to provide a FAPE, exceptional students are to receive special education and related services at public expense, under public supervision and direction, and without charge to the parent. Such education is to meet the standards of the State educational agency and shall include an IEP. See 20 U.S.C. § 1401(9). In this case the student has been provided with an IEP. The parent has not challenged the

substantive provisions of the student's IEP. The additional assessments sought by the Respondent might require that the IEP be amended. At this time, however, with what is of record, the IEP is designed to provide a FAPE.

17. An "appropriate" public education requires that the exceptional student be provided "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. 2nd DCA 1986) quoting Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 188 (1982). In this case the Petitioner will receive an "appropriate" public education implemented at [REDACTED] Absent additional information (such as might be gleaned from additional assessments), the IEP is the best tool to address this student's needs at this time.

18. Section 1003.57, Florida Statutes (2006), provides, in part:

Each district school board shall provide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable, including provisions that:

(1) The district school board provide the necessary professional services for diagnosis and evaluation of exceptional students.

(2) The district school board provide the special instruction, classes, and services, either within the district school system, in cooperation with other district school

systems, or through contractual arrangements with approved private schools or community facilities that meet standards established by the commissioner.

19. In this case, it is concluded the Respondent has met its responsibilities under the law. Absent circumstances not demonstrated by this record, a change in the location at which a student's IEP is implemented is not a change in education placement. In this case, the existing IEP for this student can be implemented at the proposed location. Further, concerns regarding the Petitioner's disabilities that may go beyond the current eligibility and IEP have not been fully established. If there are additional emotional issues that should be addressed by the IEP, the parties are required to bring such matters to the table for resolution.

20. Because the new location can adequately address the student's educational needs, it is not considered a change of education placement within the meaning of Federal law. See Weil v. Board of Elementary & Secondary Education, 931 F.2d 1069 (5th Cir. 1991); 20 U.S.C. § 1415(b)(1)(C).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Miami-Dade County School Board has provided the Petitioner with an appropriate IEP to be implemented at [REDACTED] and the student's home school.

DONE AND ORDERED this 6th day of September, 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 6th day of September, 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.