

Clay County School District  
No. 04-2961E  
Initiated by: Parent  
Hearing Officer: P. Michael Ruff  
Date of Final Order: January 3, 2005

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 04-2961E  
 )  
CLAY COUNTY SCHOOL BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

This cause came on for formal proceeding and hearing, pursuant to appropriate notice, on October 11, 2004, in Green Cove Springs, Florida, before P. Michael Ruff, duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: ██████████ (by and through her mother), pro se  
address of record

For Respondent: J. Bruce Bickner, Esquire  
Counsel for Respondent  
1406 Kingsley Avenue, Suite E  
Orange Park, Florida 32073

STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Petitioner, ██████████, is in need of ESE pre-kindergarten services,

and whether ■■■ qualifies, under the legal authority cited below, for such services to be provided by the Respondent at the Respondent's expense.

PRELIMINARY STATEMENT

This matter arose upon a request for a due process hearing. The matter was set for hearing on September 21, 2004, but was then rescheduled to the above date in response to a motion for continuance filed by the Respondent and agreed to by the Petitioner. In essence this case involves a request by the Petitioner's mother for ESE pre-kindergarten services for ■■■ ■■■ was accorded ESE pre-kindergarten services by the Respondent for the 2002-2003 school year beginning in February 2003, solely at the Petitioner's mother's request, based upon her report of behavioral problems exhibited by the Petitioner at home. The Petitioner, however, exhibited no behavioral disorder nor developmental delays during that placement in the spring of 2003 and was functioning at an advanced level for ■■■ age. Thus ■■■ was ultimately terminated from the ESE placement by the school board. The Petitioner's mother then requested the subject due process proceeding to attempt to have ■■■ placed in ESE pre-kindergarten services once again.

The cause came on for hearing as noticed. The Petitioner testified on behalf of her child, ■■■, and offered two exhibits into evidence. The Respondent presented the testimony of four witnesses and offered one composite exhibit into evidence. At the conclusion of the hearing the parties were given the opportunity to file a proposed final order and the Respondent

timely filed a proposed final order, which has been considered in the rendition of this final order.

FINDINGS OF FACT

1. The Petitioner, ■■■ is a ■■■-year-old ■■■ who is not presently enrolled in any pre-kindergarten public school environment. In February 2003, the petitioner was placed in a pre-kindergarten ESE setting for developmentally delayed children at the request of ■■■. ■■■ made this request because ■■■ contended that ■■■ had exhibited behavioral problems at home.

2. The pre-kindergarten ESE environment in which the Petitioner was placed is a self-contained environment which serves children who are developmentally delayed, have language disorders, mental handicaps, and mild emotional handicaps. It is not an appropriate setting for a child who is developing normally and has no disorders or handicaps. Such a child would begin to exhibit the characteristics of the ESE-served children, if ■■■ where placed in such an environment.

3. While ■■■ was in the ESE pre-kindergarten program, the Petitioner exhibited no behavioral disorders and no developmental delays. In reality ■■■ was functioning at an advanced level for her age.

4. In accordance with observation and testing by various employees of the Respondent School Board it was determined that the Petitioner was not developmentally delayed and had no abnormal behavioral problems. ■■■ was a typically developing child who did not qualify nor need any ESE program.

5. The Petitioner was terminated from the pre-kindergarten

ESE program at the end of the 2003-2004 school year because ■■■ did not qualify for ESE services. The Petitioner's mother was informed of the pre-kindergarten HeadStart and School Readiness HeadStart programs which are available for ■■■. The mother was also told of a program call SibShops, which is designed for siblings who have a very ill brother or sister.

6. The Petitioner has a brother who lives at home who is extremely ill and requires constant attention by the mother. ■■■ wants the Petitioner in some kind of pre-kindergarten program because ■■■ feels ■■■ is unable to give the Petitioner adequate attention because of the severe illness of the Petitioner's brother. ■■■ states that the Petitioner needs to be in some environment other than the home so that ■■■ will receive more attention. Daya Patel, M.D., the Petitioner's physician, has recommended that the Petitioner be placed in a HeadStart program. ■■■ contends that ■■■ is not able to pay for HeadStart or other pre-kindergarten programs because ■■■ is not employed.

7. The Respondent's witnesses, Michelle Williamson, Kelly Enterkin, Colette Wyant, and Cathy Grant, are all qualified by education, degrees, training and experience in the fields of exceptional education and early childhood and, in the case of Michelle Williamson, as a psychologist (school psychologist). All testing done by Michelle Williamson the school psychologist, resulted in scores for ■■■ of 91 or higher with two scores over 100. These are some of the highest scores Ms. Williamson typically sees. All the scores were in the average or higher range. The behavior rating scale portion of the evaluation from

█ shows a normal range of behavior as well.

8. Ms. Williamson established that the ESE program available was one where █ would be in constant contact with children who had various emotional behavioral developmental or mental problems and that █ might tend to adopt some of the behaviors exhibited by those children, as role models, which could intensify any behavioral problems in █ Ms. Williamson and the other witnesses for the Respondent established that █ is a normally developing child who would benefit from HeadStart and other school readiness programs, which are available in the public school environment at minimal cost. The Petitioner is not, however, an appropriate candidate for ESE pre-kindergarten services.

#### CONCLUSIONS OF LAW

9. The Division of Administrative Hearings shows jurisdiction of the subject matter of and the parties to this proceeding. See § 1003.57(5), Fla. Stat. (2004) and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Chapter 1400, et seq.

10. According to the preponderant evidence adduced in this proceeding, the Petitioner has been established to be a student who does not have disabilities, as defined in 20 U.S.C. Section 1400, et. seq., and is therefore ineligible for placement in a special education program and for special education services. Accordingly, it is determined that the Petitioner has not established that █ is qualified for ESE services at this time. See Burger v. Murray County School District, 612 F. Supp. 434

(N.D. GA. 1984) (the party seeking a new placement bears the burden of proving its propriety).

ORDER

Having considered the foregoing findings of fact, conclusions of law, the evidence of record, the candor and demeanor of the witnesses and the pleadings and arguments of the parties, it is

ORDERED that the Petitioner's request for pre-kindergarten ESE services are denied.

DONE AND ORDERED this 3rd day of January, 2005, in Tallahassee, Leon County, Florida.

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P. MICHAEL RUFF  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of January, 2005.

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.