

Miami-Dade County School District
No. 05-0021E
Initiated by: Parent
Hearing Officer: Claude B. Arrington
Date of Final Order: May 12, 2005

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

█,)
)
Petitioner,)
)
vs.) Case No. 05-0021E
)
MIAMI-DADE COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a formal hearing was conducted on March 17, 2005, by video teleconference between Tallahassee and Miami, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Joel A. Bello, Esquire
3780 West Flagler Street
Miami, Florida 33134

For Respondent: Pamela Young-Chance, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 400
Miami, Florida 33132

STATEMENT OF THE ISSUE

Whether Petitioner's misconduct was a manifestation of [REDACTED] disabilities and whether [REDACTED] will be denied a free, appropriate public education (FAPE) if [REDACTED] Individual Education Plan (IEP) is implemented at an alternative school.

PRELIMINARY STATEMENT

Petitioner is a [REDACTED] grade student who has been identified as a student with specific learning disabilities (SLD). On multiple occasions in October 2004, Petitioner violated Respondent's Code of Student Conduct. Thereafter Petitioner's IEP team met on November 1, 2004, and on November 15, 2004. As a result of those meetings, the IEP team determined that Respondent's misconduct was not a manifestation of [REDACTED] SLD and that [REDACTED] should be transferred from [REDACTED] assigned [REDACTED] school to an alternative school. Petitioner timely challenged [REDACTED] proposed transfer to an alternative school and filed the due process request that underpins this proceeding.

At the final hearing, Respondent presented the testimony of five witnesses, each of whom was employed by Respondent. Respondent's witnesses were: Winston Whyte (principal of [REDACTED] School); Ana Botifoll (a staffing specialist); Iris Harper (an exceptional student education teacher); Rona Brandell (director of alternative education placement); and Twila Grandchampe (Executive Director of Exceptional Student

Education). Official recognition was taken of the statutes and rules that had been pre-marked as Respondent's Exhibits one through six.¹ Respondent's sequentially numbered Exhibits 7-19 were admitted into evidence. Petitioner testified on [REDACTED] own behalf and presented the additional testimony of [REDACTED] mother. In addition, Petitioner recalled Iris Harper as a witness. Petitioner offered three sequentially numbered exhibits, which were admitted into evidence.

A Transcript of the proceedings was filed on April 13, 2005. The parties were thereafter given until May 2, 2005, to file their proposed final orders.² Respondent filed a Proposed Final Order which has been duly-considered by the undersigned in the preparation of this Final Order. Petitioner did not file a proposed final order.

FINDINGS OF FACT

1. Respondent is a duly-constituted school board charged with the duty to operate, control, and supervise all free public schools with the school district of Miami-Dade County, Florida, pursuant to Section 4(b) of Article IX, Constitution of the State of Florida, and Section 1001.32, Florida Statutes.

2. [REDACTED] School ([REDACTED]) and [REDACTED] School ([REDACTED]) are public schools in Miami-Dade County.

3. At the time of the final hearing, Petitioner, a [REDACTED] born [REDACTED], was a [REDACTED] grade student at [REDACTED]. Petitioner has

previously been identified as an SLD student and [REDACTED] has, at the times relevant to this matter, had an appropriate IEP and was being provided FAPE by Respondent.

4. On October 11, 2004, a teacher observed Petitioner "passionately kissing" a student in the school parking lot. Petitioner disobeyed the teacher's order to refrain from that behavior and the teacher had to physically separate the two students. Upon being separated, Petitioner directed foul and profane language towards the teacher. The teacher escorted Petitioner to the principal's office. During that walk, Petitioner was continuously rude, disruptive, and insulting to the teacher. Petitioner continued to insult the teacher even in the presence of the principal. Petitioner's behavior on October 11, 2004, described in this paragraph violated Respondent's Code of Student Conduct, which has been duly-adopted by Respondent as a rule.

5. On October 12, 2004, another teacher and a security monitor observed Petitioner attempting to fight with a female student outside the school cafeteria. When Petitioner was instructed to accompany the teacher and the security monitor to the principal's office, Petitioner became defiant and disruptive. Petitioner's behavior on October 12, 2004, described in this paragraph violated Respondent's Code of Student Conduct.

6. As a result of [REDACTED] misconduct on October 11 and 12, Petitioner was suspended from school for a total of ten days.

7. An interim IEP team met on November 1, 2004, to conduct a functional assessment of Petitioner's behavior, to develop a behavior intervention plan, and to schedule a date for a meeting at which the IEP team would determine whether Petitioner's misconduct was a manifestation of [REDACTED] disability and make needed revisions to [REDACTED] IEP. During the November 1 meeting, which Petitioner's mother attended, the IEP team developed strategies for controlling Petitioner's behavior. These strategies were subsequently implemented. The team scheduled the second meeting for November 15, 2004.

8. At the IEP meeting on November 15, 2004, which Petitioner attended, the IEP team correctly determined that Petitioner's conduct was not a manifestation of [REDACTED] disability.³

9. After determining that the misconduct was not a manifestation of [REDACTED] disabilities, the IEP team addressed the location at which Petitioner's IEP should be implemented and concluded that Petitioner's program location should be changed from [REDACTED] to [REDACTED]. In making that determination, the IEP team appropriately considered Petitioner's school records, [REDACTED] spotty attendance record, [REDACTED] pattern of being tardy, and [REDACTED] continuous disruptive, disrespectful misconduct. The IEP team reviewed Petitioner's most recent psycho-educational evaluation,

which adequately addressed the current areas of educational concern for Petitioner. The IEP team also considered the resources available at [REDACTED] and [REDACTED]. Compared to [REDACTED], the resources at [REDACTED] are better suited for addressing Petitioner's problematic behaviors. [REDACTED] is a smaller school, with three administrators and smaller classes. In addition, [REDACTED] has more counseling resources and a better behavior management program.

10. The IEP team correctly determined that Petitioner's behavior was interfering [REDACTED] ability to access education, despite having received the accommodations required by [REDACTED] IEP.

11. On November 15, 2004, the IEP team constructed an IEP that will provide Petitioner FAPE.

12. The IEP team correctly determined that Petitioner's IEP could be implemented at [REDACTED].

13. The IEP team correctly determined that Petitioner's IEP would provide [REDACTED] FAPE if it was implemented at [REDACTED].

CONCLUSIONS OF LAW

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

15. There is no dispute that the student is entitled to FAPE pursuant to federal and state law. See § 1003.57, Fla. Stat.

16. Respondent proposes to transfer Petitioner from █ to █ partly as discipline for █ misconduct and partly because it believes █ behavior can be better managed at █. Prior to imposing discipline on a student such as Petitioner, Florida Administrative Code Rule 6A-6.03312(3) requires Respondent to make a determination that the student's misconduct is not a manifestation of the student's disabilities. Respondent fully complied with all applicable provisions of IDEA, Florida Statutes, and Department of Education rules in determining that Petitioner's misconduct was not a manifestation of █ disabilities. Respondent established that the IEP dated November 15, 2004, if implemented at █, would provide Petitioner with FAPE.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent implement the IEP dated November 15, 2004, at █.

DONE AND ORDERED this 12th day of May, 2005, in Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON
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 12th day of May, 2005.

ENDNOTES

1/ All statutory references are to Florida Statutes (2004). All references to rules of the Florida Department of Education are to the version of the rule published in the Florida Administrative Code as of the date of this Order. All references to rules adopted by Respondent are to the rule in effect at the time of the final hearing.

2/ Because of Respondent's motion requesting an extension of time to file proposed final orders (PFOs), the deadline for the filing of the final order was extended to 20 days following the deadline for the filing of PFOs.

3/ Petitioner is able to control [REDACTED] behaviors and knows the difference between right and wrong. Petitioner is aware of Respondent's Code of Student Conduct and can comply with that code when [REDACTED] wants to do so.

COPIES FURNISHED:

Pamela Young-Chance, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 400
Miami, Florida 33132

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

Joel A. Bello, Esquire
3780 West Flagler Street
Miami, Florida 33134

Dr. Rudolph Crew, Superintendent
Miami-Dade County School Board
1450 Northeast Second Avenue, No. 912
Miami, Florida 33132-1394

Daniel J. Woodring, General Counsel
Department of Education
1244 Turlington Building
325 West Gaines Street
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 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.