

Broward County School District  
No. 05-2211E  
Initiated by: Parent  
Hearing Officer: Patricia M. Hart  
Date of Final Order: July 25, 2005

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-2211E  
 )  
BROWARD COUNTY SCHOOL BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

SUMMARY FINAL ORDER

Pursuant to notice, a formal hearing was convened in this case on July 20, 2005, in Miami, Florida, before Patricia Hart Malono, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: ██████████ pro se  
(address of record)

For Respondent: Mary S. Lawson, Esquire  
Broward County School Board  
600 Southwest Third Avenue, 11th Floor  
Ft. Lauderdale, Florida 33301

STATEMENT OF THE ISSUE

Whether the Petitioner's current Individualized Educational Program ("IEP"), dated July 17, 2002, provides █████ with a free appropriate public education.

DISCUSSION

On June 17, 2005, █████ on behalf of █████ █████ █████ filed with the Broward County School Board ("School Board") a request for a due process hearing, in which █████ stated that the School Board had not developed an IEP for █████ since July 2002 and that no due process hearing would be necessary if the School Board would

[h]old an IEP meeting with people who know my █████, specifically, the people from █████ school (from which █████ just graduated two weeks ago), and not with District people present as they have been obstructionist, held up the process, unilaterally cancelled IEP meetings . . . have articulated that they would not give my █████ what the staff feels that █████ needs and have, overall, demonstrated that they are not looking to appropriately educate my █████.

At a pre-hearing conference held on June 24, 2005, █████ stated that the relief █████ sought on █████'s behalf was that the School Board develop an IEP for █████ for the 2005-2006 school year that provides █████ a free appropriate public education.

On July 7, 2005, the parties filed a statement of Joint Stipulated Facts, signed by both █████ and the School Board's counsel, in which, pertinent to this Order, the parties agreed that a revised annual IEP had been developed for █████ in

July 2002; that, as a result of a Final Order entered after a due process hearing requested by [REDACTED] on [REDACTED]'s behalf, the July 17, 2002, revised IEP remained in effect for the 2004-2005 school year as the "stay put" IEP; that [REDACTED] attended the [REDACTED] School during the 2004-2005 school year, which ended June 2, 2005; that [REDACTED] would attend [REDACTED] Middle School beginning in August 2005; that meetings to develop a revised IEP for [REDACTED] were held on April 21 and 25, 2005, and that continuation meetings were held on May 19 and 23, 2005; that the IEP team has developed the "Present Level of Performance" section of a revised IEP for [REDACTED] for the 2005-2006 school year; and that, subsequent to June 2, 2005, "scheduling a date for the continuation of the IEP meeting has been unsuccessful." At a hearing held on July 11, 2005, attended via telephone by [REDACTED] and the School Board's counsel, the School Board confirmed that the IEP team has not completed a revision of [REDACTED]'s IEP for the upcoming 2005-2006 school year and that the only IEP in place for [REDACTED] is the IEP revised July 17, 2002.

Section 1003.57, Florida Statutes (2004), provides in pertinent part that "[e]ach 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 . . . ." Florida Administrative Code Rule 6A-6.03028, provides in pertinent part:

An Individualized Educational Program (IEP) . . . must be developed, reviewed, and revised for each eligible child with a disability served by a school district . . . that provides special education and related services either directly, by contract, or through other arrangements, in accordance with this rule.

\* \* \*

(5) Timelines. Timelines for IEP meetings for students with disabilities shall include the following:

(a) An IEP, which has been reviewed, and if appropriate, revised within the past year, must be in effect at the beginning of each school year for each eligible student with a disability.

\* \* \*

(10) Review and revision of the IEP. The school district shall ensure that the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP as appropriate . . . .

Given the above-recited facts on which the parties agree and the requirements of Florida Administrative Code Rule 6A-6.03028, an Order to Show Cause was entered on July 13, 2005, in which the parties were directed to show cause why, based on the stipulated facts and the relevant law, the undersigned should not issue a Summary Final Order directing the School Board to develop a revised IEP for the 2005-2006 school year that offers

special education and any related services necessary to provide █████ with a free appropriate public education. The parties were directed to be prepared to respond to the Order at the commencement of the due process hearing scheduled for July 20, 2005, and the parties were given leave to file a written response on or before July 20, 2005.<sup>1</sup> On July 13, 2005, the School Board filed the School Board's Response to the Order to Show Cause, in which it stipulated that "[i]t is required to develop an annual IEP for the PETITIONER" and that "[m]eetings will be held in order to finalize PETITIONER'S annual IEP before the commencement of the 2005-06 school year or as soon thereafter as is practically possible." The School Board further stipulated "[t]o the entry of a Summary Final Order requiring THE SCHOOL BOARD to develop an annual IPE for PETITIONER."

The due process hearing was called to order on July 20, 2005, and the School Board and █████ presented oral argument on the Order to Show Cause. The School Board reiterated the position it took in its response to the Order to Show Cause and conceded that entry of a Summary Final Order directing it to prepare a revised IEP for █████ for the 2005-2006 school year was appropriate. █████ raised several factual issues during █████ argument regarding █████ understanding of the reasons for the lack of progress in developing an IEP for █████ for the 2005-2006

school year. During [REDACTED] argument, [REDACTED] alleged specifically that certain school district employees attending the IEP meetings in April and May 2005 had created a hostile atmosphere in which it was not possible to work constructively on [REDACTED]'s revised IEP and that, in [REDACTED] opinion, it would be futile to hold additional IEP meetings if these individuals were to attend those meetings. [REDACTED] also alleged that school district personnel have pre-determined the services that would be included in [REDACTED]'s IEP and are, therefore, not prepared to develop a revised IEP that provides [REDACTED] with an educational placement developed to meet [REDACTED] individual needs. [REDACTED] requested that the School Board be required to develop an appropriate IEP for [REDACTED] to be in place when [REDACTED] enters middle school in a few weeks time. In its response to [REDACTED]'s argument, the School Board disputed the accuracy of the factual allegations made by [REDACTED]

The undersigned has carefully considered the factual allegations made by [REDACTED] in [REDACTED] argument. Certainly, based on these allegations and the School Board's position that the allegations are inaccurate, there are disputed issues of fact regarding the development of a revised IEP for [REDACTED] for the 2005-2006 school year. These factual issues are, however, not material to the real issue in this case, which is the School Board's failure to have in place a revised IEP for [REDACTED] for the

2005-2006 school year. The School Board admits its failure failed to carry out its legal responsibility to develop a revised IEP for [REDACTED] for the 2005-2006 school year pursuant to the requirements of Florida Administrative Code Rule 6A-6.03028, and there are no disputed issues of material fact that remain to be resolved in an evidentiary hearing.

CONCLUSION

Based on the foregoing, it is ORDERED that the Broward County School Board shall develop an annual revised IEP for [REDACTED] for the 2005-2006 school year in accordance with the requirements of Section 1003.57, Florida Statutes (2004), and Florida Administrative Code Rule 6A-6.03028.

DONE AND ORDERED this 25th day of July, 2005 in Tallahassee, Leon County, Florida.

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PATRICIA M. HART  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings

this 25th day of July, 2005.

ENDNOTE

<sup>1/</sup> In the Order, the undersigned inadvertently identified the date of the due process hearing as "July 19, 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.