

Palm Beach County School District
No. 05-2263E
Initiated by: Parent
Hearing Officer: Claude B. Arrington
Date of Final Order: August 2, 2005

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

█,)
)
Petitioner,)
)
vs.) Case No. 05-2263E
)
PALM BEACH COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a formal hearing was conducted on June 22, 2005, at West Palm Beach, Florida, before Claude B. Arrington, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Parents of █, pro se
(Address of record.)

For Respondent: Laura E. Pincus, Esquire
Palm Beach County School Board
3318 Forest Hill Boulevard, Suite C-302
West Palm Beach, Florida 33406

STATEMENT OF THE ISSUE

Whether Petitioner will be denied a free, appropriate public education (FAPE) if [REDACTED] Individual Education Plan (IEP) is implemented at an alternative school.

PRELIMINARY STATEMENT

At all times relevant to this proceeding, Petitioner was eligible for and receiving services from Respondent's Exceptional Student Education (ESE) Department at [REDACTED] Elementary School ([REDACTED]). Petitioner will be in the [REDACTED] grade for the upcoming school year. Petitioner's latest IEP developed in May 2005, proposes that [REDACTED] be placed in a [REDACTED] grade class at the [REDACTED] School ([REDACTED]), which is an alternative school operated by Respondent. Petitioner's parents disagree with that proposed placement and have requested a due process hearing to challenge the proposed placement. That request was referred to DOAH, and this proceeding followed.

At the final hearing, Respondent presented the testimony of Tracey Kouf (the ESE contact person at [REDACTED]), Joanne Barr (Petitioner's ESE teacher at [REDACTED]), Derri Parkey (the ESE Area Team Leader) and Petitioner's mother. Both of Petitioner's parents testified at the final hearing and they presented one exhibit, which was admitted into evidence.

No transcript of the proceedings was filed. 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 Palm Beach, Florida, pursuant to Section 4(b) of Article IX, Constitution of the State of Florida, and Section 1001.32, Florida Statutes (2005).¹

2. At the time of the final hearing, Petitioner had completed the ■■■ grade at ■■■ and was expected to enroll as a ■■■ grade student in Respondent's School District for the following school year.

3. At all times relevant to this proceeding, Petitioner was eligible for and receiving services from Respondent's ESE Department as a student with a specific learning disability (SLD). In addition to ■■■ SLD, Petitioner has been diagnosed with Attention Deficit Hyperactivity Disorder.

4. Petitioner is defiant and unwilling to follow orders from authority figures. Petitioner is impulsive, has difficulty staying on task, and seeks negative attention. ■■■'s teachers and staff at ■■■ tried many interventions to assist Petitioner during ■■■ ■■■ grade year with little success. ■■■'s teacher (Ms. Barr) had daily conferences with one or both of Petitioner's parents. She completed daily point sheets on which

Petitioner would be given credit for appropriate behavior and awarded prizes for that behavior. Ms. Barr completed and updated a functional behavior assessment and implemented a behavior plan. Notwithstanding those efforts, Petitioner's behavior during [REDACTED] [REDACTED] grade year was inconsistent and [REDACTED] progress (both social and academic) was minimal. Petitioner continued to be defiant, impulsive, and disruptive throughout [REDACTED] [REDACTED] grade year. Petitioner's behavior disrupted [REDACTED] classroom and impaired [REDACTED] academic progress. [REDACTED] behavior also interfered with the education of [REDACTED] classmates.

5. After appropriate evaluation, Petitioner's IEP team found [REDACTED] not to be eligible for services as a student with an emotional handicap. A consideration in reaching that conclusion was that Petitioner can control [REDACTED] behavior when motivated to do so. There was no evidence contradicting the determination by the IEP team.

6. On May 26, 2005, the IEP team met and drafted an IEP for the upcoming year that would be implemented at [REDACTED]. Petitioner does not challenge any of the elements of the IEP, other than that it be implemented at [REDACTED].

7. Petitioner needs extensive individualized behavior modification that is unavailable in a traditional classroom, even one with an ESE teacher as qualified and as involved as Ms. Barr.

8. Petitioner's IEP can be fully implemented at [REDACTED]. The targeted placement is a class of eight to ten students with a trained ESE teacher, a paraprofessional, and a behavioral specialist who will provide services to Petitioner's class and to another class of similar size. In addition, there is a family counselor available to provide any needed professional services to Petitioner and [REDACTED] family.

9. Respondent established that Petitioner's academic needs cannot be met in a regular school because of [REDACTED] behavior. Respondent also established that Petitioner requires the more structured environment that is only available in an alternative school such as [REDACTED].

10. The implementation of Petitioner's May 26, 2005, IEP at [REDACTED] will provide the student with a free, appropriate public education in the least restrictive available environment.

CONCLUSIONS OF LAW

11. 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.

12. There is no dispute that the student is entitled to FAPE pursuant to federal and state law. The Individuals with Disabilities Education Act (IDEA), Title 20, Section 1400, et seq., United States Code, requires that exceptional students be

provided FAPE. Moreover, Section 1003.57, Florida Statutes, provides, in pertinent part, as follows:

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.

* * *

(5) No student be given special instruction or services as an exceptional student until after he or she has been properly evaluated, classified, and placed in the manner prescribed by rules of the State Board of Education. . . .

(6) In providing for the education of exceptional students, the district school superintendent, principals, and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students to the maximum extent appropriate. Segregation of exceptional students shall occur only if the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. . . .

13. The requirements for FAPE under IDEA and Florida law require that Respondent provide Petitioner with access to specialized instruction and related services which are individually designed to provide educational benefits to the student. See Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S., 176 (1982). Other than the

issue of placement, there is no dispute that the May 26 IEP will provide Petitioner FAPE if properly implemented.

14. Respondent established that it has complied with all substantive and procedural requirements of IDEA and Florida law in drafting the IEP, including the determination that the IEP should be implemented at [REDACTED]. Respondent established that [REDACTED] is the least restrictive environment in which Petitioner's IEP can be implemented.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent implement the IEP dated May 26, 2005, at [REDACTED].

DONE AND ORDERED this 2nd day of August, 2005, in Tallahassee, Leon County, Florida.

S

CLAUDE B. ARRINGTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of August, 2005.

ENDNOTE

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.

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.