

Nassau County School District  
No. 05-1988  
Initiated by: Parent  
Hearing Officer: Patricia M. Hart  
Date of Final Order: August 5, 2005

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-1988E  
 )  
BROWARD COUNTY SCHOOL BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on July 7, 2005, in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: ██████ on behalf of ██████  
(Address of record)

For Respondent: Edward J. Marko, Esquire  
Mary S. Lawson, Esquire  
Broward County School Board  
600 Southeast Third Avenue, 11th Floor  
Ft. Lauderdale, Florida 32399-0400

STATEMENT OF THE ISSUE

Whether the Respondent is providing the Petitioner with a free appropriate public education.

PRELIMINARY STATEMENT

On June 1, 2005, [REDACTED] on behalf of [REDACTED] [REDACTED] [REDACTED] filed a request for a due process hearing with the Broward County School Board ("School Board"), in which [REDACTED] alleged that [REDACTED] had not met all of the goals and objectives set out in [REDACTED] Individualized Educational Program ("IEP") since February 17, 2004; that [REDACTED] was exempted from speech class in February 2005; and that [REDACTED] was not approved for the School Board's Extended School Year ("ESY") program for the summer of 2005. [REDACTED] stated that [REDACTED] was challenging [REDACTED] academic progress for each grade level from kindergarten through fourth grade and that the due process hearing request would not be necessary if [REDACTED] had received "better ESE [exceptional student education] education." The School Board transmitted the request to the Division of Administrative Hearings for assignment of an administrative law judge, and, pursuant to notice, the hearing was held on July 7, 2005.

At the hearing, [REDACTED] testified on behalf of [REDACTED] [REDACTED] and presented the testimony of [REDACTED] [REDACTED]'s grandmother; Petitioner's Exhibits 1 through 33 were offered and received into evidence. The School Board presented the

testimony of [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; Respondent's Exhibits 1 through 11 were offered and received into evidence. At the School Board's request, official recognition was taken of the file of the Division of Administrative Hearings in [REDACTED] v. Broward County School Board, DOAH Case No. 03-4481E.

In [REDACTED] request for a due process hearing, [REDACTED] asserted that [REDACTED] was challenging [REDACTED] academic progress in the Broward County school system for the period extending from kindergarten through the fourth grade. The School Board filed a Motion in Limine on July 6, 2005, in which it requested [REDACTED] be precluded from introducing evidence relating to [REDACTED] education prior to the third grade. The School Board argued in the motion that [REDACTED] had filed a request for a due process hearing in December 2003 in which [REDACTED] challenged [REDACTED] progress in the Broward County school system from kindergarten through second grade, that [REDACTED] had withdrawn this request for a due process hearing, and that [REDACTED] should be barred from raising issues that were previously resolved.<sup>1</sup> Argument was heard on this motion at the beginning of the due process hearing.

No ruling was made on the Motion in Limine, however, because, during the argument on the motion, it was revealed that [REDACTED] had not disclosed to the School Board the identity of [REDACTED]

witnesses or documentary evidence five days prior to the due process hearing, as required by Florida Administrative Code Rule 6A-6.03311(11)(e)1.c. and the Pre-Hearing Order entered June 7, 2005. The School Board did not object to [REDACTED] introducing into evidence testimony and documents relating to [REDACTED] education in the third and fourth grade, when [REDACTED] attended [REDACTED] School (" [REDACTED] ") in Broward County, Florida, but it did object to [REDACTED] introducing into evidence documents relating to [REDACTED] education from kindergarten through second grade, when [REDACTED] attended [REDACTED] School (" [REDACTED] ") in Broward County, Florida. Because it appears from the language of Florida Administrative Code Rule 6A-6.03311(11)(e)1.c. that an administrative law judge has no discretion to permit, over the objection of the opposing party, the introduction of evidence not disclosed at least five days prior to the due process hearing, [REDACTED] was advised that [REDACTED] could not introduce documents or testimony relating to [REDACTED] education at [REDACTED].

The transcript of the proceedings was filed July 25, 2005. Both [REDACTED] and the School Board submitted post-hearing proposals, which have been considered in the preparation of this Final Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. [REDACTED] is an [REDACTED]-year-old [REDACTED] who attended [REDACTED] from August 30, 1999, when [REDACTED] began kindergarten, until June 13, 2003, when [REDACTED] completed the [REDACTED] grade [REDACTED] transferred to [REDACTED] and began the [REDACTED] grade in August 2003; [REDACTED] attended the [REDACTED] grade at [REDACTED] during the 2004-2005 school year and will enter the [REDACTED] grade at [REDACTED] in August 2005.

2. [REDACTED] was found eligible for exceptional student education ("ESE") services in April 2000 in the area of speech articulation, and an IEP addressing speech articulation was developed for [REDACTED] in April 2000.

3. At [REDACTED] request, School Board personnel began collecting data at the beginning of the 2003-2004 school year in preparation for conducting a comprehensive evaluation of [REDACTED]

4. A conference was held [REDACTED] request on October 3, 2003, to discuss [REDACTED] educational progress and to review [REDACTED] school records. [REDACTED], the ESE specialist at [REDACTED], attended the conference, together with [REDACTED] regular third-grade classroom teacher, Ms. [REDACTED]; an ESE teacher, [REDACTED], who was [REDACTED] as part of the Child Study

referral initiated by [REDACTED] and Ms. [REDACTED], [REDACTED] speech therapist.

5. At the time of this conference, the only ESE service [REDACTED] was receiving was speech articulation therapy. [REDACTED] was concerned that [REDACTED] had received an "F" in mathematics on the Progress Report for the first grading period of the 2003-2004 school year, which was issued on September 24, 2003. Ms. [REDACTED] explained to [REDACTED] that [REDACTED] was being instructed in mathematics on the third-grade level, and it was suggested that [REDACTED] assist [REDACTED] with practical mathematics skills at home. It was also reported to [REDACTED] that [REDACTED] was participating in four of seven learning centers in Ms. [REDACTED]'s classroom and that [REDACTED] would be participating in five of seven learning centers the following week.

6. [REDACTED] received a "C+" in reading for the period ending September 24, 2003, a "B" in language arts, and an "A" in social studies. On a Progress Report dated October 13, 2003 [REDACTED] grade in mathematics had risen to a "D".

7. On October 10, 2003 [REDACTED] signed a form consenting to an evaluation, and a psycho-educational evaluation was conducted on December 16, 2003, and on January 6 and 16, 2004. The report was completed on January 27, 2004, and a meeting was held on February 17, 2004, for the purpose of reviewing the psycho-educational report; determining if [REDACTED] was eligible for ESE

services in addition to speech articulation services; and developing an IEP based on the eligibility determination.

8. ██████ attended the meeting on February 17, 2004, and was accompanied by a parent advocate.

9. At the February 17, 2004, meeting, the IEP team and ██████ went over the psycho-educational evaluation, and it was determined that ██████ was eligible for ESE services as a child with a specific learning disability ("SLD"). The determination of eligibility was based on the criteria set out in the section of the School Board's "Procedures for Specific Programs" devoted to "Programs for Students Who Are Identified as Specific Learning Disabled," which, in turn, are based on the criteria set forth in the rules of the Florida Department of Education.

10. ██████ eligibility for ESE services as a student with a SLD was based on the discrepancy of one standard deviation between ██████ Full Scale Score of 85 points on the Wechsler Intelligence Scale for Children- Fourth Edition and ██████ score of 70 points on the Woodcock-Johnson Psychoeducational Battery-III-Tests of Achievement in the area of Written Expression, as well as on the results of the Visual-Aural Digit Span Test indicating that ██████ had a processing deficit in retaining information presented orally. ██████ test results also established that ██████ did not have a one-standard-deviation deficit in mathematics and that ██████ was working to ██████

capacity in mathematics. In general, ██████ academic profile reflected Standard Scores commensurate with ██████ Full Scale IQ score of 85 points.

11. The results of the psycho-educational evaluation established that ██████ did not meet the criteria for classification as an emotionally handicapped or speech impaired student.

12. At the time of the evaluation, ██████ was mid-way through the ██████ grade. ██████ was working at the second-grade level in instructional reading and at the third-grade level in instructional mathematics. ██████ teacher observed that ██████ had difficulties decoding third- and second-grade materials independently. ██████ had also been notified in a letter from the School Board dated January 22, 2004, that a draft Academic Improvement Plan ("AIP") had been prepared for ██████ to address deficiencies that had been identified in several components of mathematics, reading, and writing. The AIP was to be implemented by Ms. Linscheer, ██████ regular fourth-grade classroom teacher.

13. At the February 17, 2004, IEP meeting, the IEP team went over the psycho-educational evaluation with ██████ and an IEP for the period extending from February 17, 2004, until February 17, 2005, was developed. ██████ present level of



performance was described in the February 17, 2004, IEP as follows:

█████ is reading on a 1.5 independent level and a 2.2 instructional level. █████ uses phonics and context to read unfamiliar words. █████ answers basic comprehension questions but needs assistance at times with higher-level comprehension questions (i.e. inferences and cause and effect). █████ is able to find the main idea, summarize a selection, and follow simple written directions. █████ requires moderate modifications and prompting in Reading. In the area of Writing, █████ is working on a second grade level. █████ writes legibly and uses capitalization and punctuation correctly. █████ is able to write a simple paragraph to topic with cues for using appropriate word order and grammar in sentences. █████ needs assistance with spelling, prewriting, and proofreading techniques. █████ needs moderate modifications and prompting in Writing. In the area of Math, █████ is working on a 3rd grade instructional level. █████ is able to add and subtract without regrouping. █████ is able to count money, use charts and graphs, and complete one step word problems. █████ requires moderate modifications and prompting in Math. █████ excels in art and demonstrates creativity. █████ demonstrates a strength in tasks involving visual cues and representations. As a result of █████ disability, █████'s acquisition of writing skills and reading comprehension skills is slower than that of █████ general education peers.

14. █████ priority educational needs were identified in the IEP as "improv[ing] written expression skills, improv[ing] independent functioning skills, improv[ing] reading comprehension skills, and improv[ing] articulation of target

phonemes." A number of annual goals and short-term instructional objectives to address [REDACTED] priority educational needs were developed and included in the IEP.

15. The February 17, 2004, IEP provided that [REDACTED] was to participate in the regular education program 74 percent of the time. Specialized instruction in written expression, reading comprehension, and independent functioning skills was to be provided by an ESE teacher for 375 minutes each week in the ESE resource room and speech articulation therapy was to be provided by a speech therapist for 90 minutes per week in the ESE resource room. [REDACTED] was also to take the Florida Comprehensive Assessment Test ("FCAT"), with accommodations, and to work on the Sunshine State Standards, although it was noted in the IEP that [REDACTED] would be working at "another grade level."

16. [REDACTED] participated in the IEP meeting and did not express any concerns regarding the contents of the IEP.

17. Ms. [REDACTED] indicated in the Progress Report issued at the end of the 2003-2004 school year that [REDACTED] was working independently at a second-grade level in reading, language arts, and mathematics. For the fourth grading period of the [REDACTED] grade, [REDACTED] received a "C" in reading, language arts, mathematics, and social studies, and a "D" in science/health.<sup>2</sup> Ms. [REDACTED] noted that [REDACTED] had independently mastered skills in art, music, and physical education; that [REDACTED] had mastered some

"social growth" skills; and that [REDACTED] was learning other "social growth" skills and "study skills" with assistance. Ms. [REDACTED] recommended that [REDACTED] be promoted to the [REDACTED] grade.

18. The Report of Progress included in [REDACTED] February 17, 2004, IEP was completed for the fourth term of the 2003-2004 school year, and it reflected that [REDACTED] was doing very well in speech articulation therapy, that [REDACTED] was making some progress in mastering [REDACTED] other annual goals, and that [REDACTED] should meet [REDACTED] annual goals by the end of the IEP period in February 2005.

19. [REDACTED] attended [REDACTED] Grade Summer Reading Camp from July 7, 2004, through August 2, 2004.

20. On October 8, 2004, shortly after the 2004-2005 school year began, a meeting was held to develop new goals for [REDACTED] speech articulation therapy. [REDACTED] had met all of the goals set out in the February 17, 2004, IEP, and new goals were written for the remainder of the IEP period. The time [REDACTED] was to spend in speech therapy was reduced to 30 minutes per week, and the time [REDACTED] was to spend in the ESE resource room was increased to 450 minutes per week, with the remainder of [REDACTED] time to be spent in [REDACTED] [REDACTED]-grade regular education classroom. Although [REDACTED] indicated on the parent notification form that she would attend the meeting, she did not attend.

21. In a letter from the School Board dated November 11, 2004, [REDACTED] was advised that [REDACTED] was below grade level in mathematics, reading, and writing and that a draft AIP had been prepared for [REDACTED] to address the deficiencies. The AIP was to be implemented in the regular education classroom by [REDACTED] regular education classroom teacher, Ms. [REDACTED].

22. The Report of Progress included in [REDACTED] February 17, 2004, IEP reflected that, at the end of the 2004-2005 school year, [REDACTED] had made adequate progress in meeting [REDACTED] speech articulation goals and that [REDACTED] was making some progress in mastering [REDACTED] other annual goals.

23. A meeting was held on February 10, 2005, to develop an annual revised IEP for [REDACTED] [REDACTED] was advised of the date of the meeting in a Parent Participation form sent to [REDACTED] by the School Board. [REDACTED] was also advised in the form that a new IEP would be developed at the meeting and that [REDACTED] possible dismissal from "Speech Impaired" would be discussed at the meeting. Although [REDACTED] indicated on the Parent Participation form that she would attend the meeting, she did not attend.

24. An annual revised IEP was developed for [REDACTED] at the February 10, 2005, meeting. In developing the IEP, the IEP team reviewed [REDACTED] previous IEP, [REDACTED] AIPs, [REDACTED] annual goals/progress report, [REDACTED] report cards, and teacher

observations [REDACTED] present level of performance was described as follows:

[REDACTED] is reading on a 3rd grade instructional level and a 2nd grade independent level. [REDACTED] uses . . . phonetics to decode words and is able to answer basic comprehension questions. [REDACTED] is able to summarize a selection and read and follow simple directions. [REDACTED] continues to need assistance with answering higher level comprehension questions (including inferences, outcomes, and cause and effect). In Writing, [REDACTED] is working on a 3rd grade level. [REDACTED] . . . writes paragraphs to topic with legible handwriting [REDACTED] needs assistance to plan and write a multi paragraph essay and proofread for errors. In Math, [REDACTED] is working on a 3rd grade level. [REDACTED] is able to add and subtract with and without regrouping. Also [REDACTED] is learning [REDACTED] multiplication facts and uses aids to complete multiplication tasks. [REDACTED] needs assistance with word problems.

25. The IEP team identified [REDACTED] priority educational needs for the duration of the IEP as "Reading Comprehension, Essay Writing, and Math Word Problem completion," and annual goals and short-term objectives to address [REDACTED] priority educational needs were included in the February 10, 2005, IEP.

26. A determination was made at the February 10, 2005, IEP meeting that [REDACTED] no longer needed speech articulation therapy because [REDACTED] had met all of the goals established in the February 17, 2004, and October 8, 2004, IEPs, and these ESE services were terminated.

27. ██████ February 10, 2005, IEP specified that, for the remainder of the ██████ grade and the first half of the ██████ grade, ██████ would continue working on the Sunshine State Standards on "another grade level" and that ██████ would take the FCAT, with accommodations. ██████ FCAT remediation areas were identified as mathematics and reading.

28. The February 10, 2005, IEP, provided that ██████ was to be placed in a regular classroom for 75 percent of ██████ school day, where ██████ was to receive instruction in language arts, science, social studies, and elective subjects. ██████ was to spend 25 percent of ██████ school day receiving ESE services in the ESE resource room. Under the February 10, 2005, IEP, ██████ was to receive 300 minutes of specialized instruction in reading five times per week from an ESE teacher in the resource room. The IEP team added an annual goal for mathematics because of the difficulty ██████ was having with mathematics, especially work problems, and the IEP provided that ██████ would receive 150 minutes of specialized instruction in mathematics five times per week from an ESE teacher in the resource room. ██████ was also to receive supplementary aids and accommodations in the regular classroom and when taking the FCAT.

29. Because ██████ did not attend the February 10, 2005, IEP meeting, a Parent Notification Letter was prepared on that date advising ██████ that a new IEP had been developed and that ██████

had been dismissed from speech therapy; the letter also advised [REDACTED] that the IEP team had recommended new goals and objectives for [REDACTED]. A copy of the February 10, 2005, IEP was attached to the Parent Notification Letter, together with the paperwork developed at the IEP meeting and a document entitled "IEP At A Glance," which contained a summary of the provisions of the IEP. She was advised to review these materials and to call Ms. [REDACTED] or Ms. [REDACTED] if she had any questions or if she disagreed with the provisions of the IEP. A copy of the booklet Procedural Safeguards for Exceptional Students was enclosed with the packet of materials.

30 [REDACTED] did not contact School Board personnel with questions about the IEP or to express [REDACTED] disagreement with its provisions, and the February 10, 2005, IEP was implemented during the remainder of the [REDACTED] grade.

31. In February 2005, [REDACTED] was working below grade-level in reading, writing, and mathematics. Nonetheless, between February 2004 and February 2005, [REDACTED] progressed one grade-level in all areas of [REDACTED] identified priority educational needs except mathematics. [REDACTED] difficulty with mathematics was attributed to the growing complexity of the word problems in mathematics, which required a greater level of reading comprehension. [REDACTED] February 10, 2005, IEP included an annual mathematics goal, and 30 minutes of small-group instruction in

the ESE resource room was added to [REDACTED] ESE instruction. At the end of the 2004-2005 school year, the Progress Report included in [REDACTED]'s IEP reflected that [REDACTED] had made some progress reaching all of the goals set out in the February 10, 2005, IEP and that it was anticipated that [REDACTED] would meet the goals by the end of the duration of the IEP.

32. In the final Progress Report for the 2004-2005 school year, Ms. [REDACTED] indicated that [REDACTED] was working at a third-grade instructional level in reading, language arts, and mathematics. For the fourth grading period of the [REDACTED] grade, [REDACTED] received a "B" in reading and mathematics, and a "C" in language arts, social studies, and science/health. Ms. Lindsheer noted that [REDACTED] had independently mastered skills in physical education; that [REDACTED] was learning skills in art and music with assistance; that [REDACTED] had mastered some "social growth" skills; and that [REDACTED] was learning other "social growth" skills and "study skills" with assistance. Ms. [REDACTED] recommended that [REDACTED] be promoted to the [REDACTED] grade.

33. The results of all of the tests administered to [REDACTED] including the FCAT, indicated that [REDACTED] made educational progress during the 2003-2004 and 2004-2005 school years in all of the priority educational needs identified in [REDACTED] February 17, 2004, and February 10, 2005, IEPs.



CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Section 1003.57(5), Florida Statutes, (2004), and Florida Administrative Code Rule 6A-6.03311(11).

35. Pursuant to Title 20, Section 1412(1), United States Code, which is part of the Individuals with Disabilities Education Act ("IDEA"), a state is eligible for federal funds if it demonstrates that it has "in effect a policy that assures all children with disabilities the right to a free appropriate public education."

36. Florida's plan for providing a free appropriate public education is set forth in the Florida Statutes and in Florida Administrative Code Rules 6A-6.03011 through 6A-6.0361. Section 1003.57, Florida Statutes (2004), provides in pertinent 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.

\* \* \*

(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. The parent of an exceptional student evaluated and placed or denied placement in a program of special education shall be notified of each such evaluation and placement or denial. Such notice shall contain a statement informing the parent that he or she is entitled to a due process hearing on the identification, evaluation, and placement, or lack thereof. Such hearings shall be exempt from the provisions of ss. 120.569, 120.57. and 286.011, except to the extent that the State Board of Education adopts rules establishing other procedures and any records created as a result of such hearings shall be confidential and exempt from the provisions of s. 119.07(1). The hearing must be conducted by an administrative law judge from the Division of Administrative Hearings of the Department of Management Services. The decision of the administrative law judge shall be final, except that any party aggrieved by the finding and decision rendered by the administrative law judge shall have the right to bring a civil action in the circuit court. In such an action, the court shall receive the records of the administrative hearing and shall hear additional evidence at the request of either party. In the alternative, any party aggrieved by the finding and decision

rendered by the administrative law judge shall have the right to request an impartial review of the administrative law judge's order by the district court of appeal as provided by s. 120.68. Notwithstanding any law to the contrary, during the pendency of any proceeding conducted pursuant to this section, unless the district school board and the parents otherwise agree, the student shall remain in his or her then-current educational assignment or, if applying for initial admission to a public school, shall be assigned, with the consent of the parents, in the public school program until all such proceedings have been completed.

(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.

37. ██████ contends that the School Board has failed to provide ██████ with a free appropriate public education because. ██████ has not made educational progress in spite of the ESE programs provided to ██████ in the Broward County school system. ██████ is concerned that ██████ is working below grade-level in most academic subjects, and ██████ believes that ██████ will receive a free appropriate public education only if ██████ is transferred to an "appropriate" school, if ██████ IEP is totally revised, and

if the amount of time ██████ receives ESE instruction in the ESE resource room is increased.

38. Because ██████ did not object to the IEPs developed February 17, 2004, and February 10, 2005, ██████ must prove by a preponderance of the evidence that the School Board has not provided ██████ with a free appropriate public education in order to establish that the relief she requests on behalf of ██████ should be granted. See Devine v. Indian River County School Board, 249 F.3d 1289, 1292 (11th Cir. 2001)("[B]ecause it is the parents who are seeking to attack a program they once deemed appropriate, the burden rests on the parents in this IEP challenge.").

39. The court in Cypress-Fairbanks Independent School District v. Michael F., 118 F.3d 245, 247-48 (5th Cir. 1997), citing Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), described the elements of a free appropriate public education as follows:

When a parent or guardian challenges the appropriateness of an IEP crafted by a state or local education agency and the resulting educational placement, a reviewing court's inquiry is generally twofold. It must ask first whether the state or local agency complied with the procedures set forth in the Act, and if so whether "the individualized educational placement developed through the Act's procedures [was] reasonably calculated to enable the child to receive educational benefits."

See also Oberti v. Board of Education of Borough of Clementon School District, 995 F.2d 1204 (3d Cir. 1993); Board of Education of East Windsor Regional School District v. Diamond, 808 F.2d 987 (3d Cir. 1986).

40. The procedural requirements of the IDEA are designed to involve a child's parents in the process of determining their child's eligibility for ESE services, to apprise them of the School Board's proposal or refusal to evaluate their child and consider him or her for placement in an ESE program, and to permit the parents to participate in a meaningful way in the development of the IEP for their child. ██████ did not allege, and the findings of fact herein do not support a conclusion, that the School Board failed to comply with the procedural requirements of the IDEA. The School Board responded promptly to ██████ request at the beginning of the 2003-2004 school year that ██████ be evaluated for ESE services, and ██████ attended and participated in the IEP meeting on February 17, 2004, at which ██████ IEP was developed. Even though she did not attend the February 10, 2005, IEP meeting, ██████ was notified of the meeting, the IEP and other materials developed at that meeting were provided to ██████, and she was given the opportunity to contact the School Board if she had any questions or if she disagreed with the contents of the IEP.

41. To satisfy the substantive requirements of the IDEA, an IEP must be "reasonably calculated to enable the child to receive educational benefits," Rowley, 458 U.S. at 206-07, and it must be predicated on what appears seems to be "objectively reasonable . . . at the time" it is promulgated. Independent School District No. 283 v. S.D., 848 F. Supp. 860, 878 (D. Minn. 1995). The IDEA does not, however, require that the potential of a disabled child be maximized, and Florida law does not require school boards to provide a disabled child the best possible education or the placement preferred by the child's parents. School Board of Martin County v. A.S., 727 So. 2d 1071, 1074 (Fla. 4th DCA 1999). Rather, as summarized by the court in Michael F.,

[t]he "free appropriate public education" . . . described in an IEP, . . . need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him "to benefit" from the instruction. In other words, the IDEA guarantees only a "basic floor of opportunity" for every disabled child, consisting of "specialized instruction and related services which are individually designed to provide educational benefit." Nevertheless, the educational benefit to which the Act refers and to which an IEP must be geared cannot be a mere modicum or de minimis; rather, an IEP must be "likely to produce progress, not regression or trivial educational advancement." In short,

the educational benefit that an IEP is designed to achieve must be "meaningful."

118 F.3d at 247-48 (footnotes and citations omitted).

42. Based on the finding of facts herein, the School Board has satisfied the substantive requirements of the IDEA and of Section 1003.57, Florida Statutes (2004), with respect to the education provided to ██████. The February 17, 2004, and February 10, 2005, IEPs included goals and objectives designed to meet ██████ individual needs and to provide ██████ with a meaningful educational benefit. During the third and fourth grades at ██████, ██████ made meaningful progress in meeting both ██████ academic and speech articulation goals. Based on the findings of fact herein, ██████ has failed to prove that the School Board can provide ██████ with a meaningful educational benefit only if ██████ is transferred to another school, if ██████ IEP is completely revised, and if ██████ time in the ESE resource room is increased.

43. It is apparent from the evidence presented herein by ██████ and from the arguments she presented at the hearing and in ██████ post-hearing submittal that she wants the best possible education for ██████ in order to maximize ██████ potential to be an independent adult. The School Board is not, however, required by the IDEA to provide ██████ with the maximum educational benefit. See Weiss v. School Board of Hillsborough County, 141

F.3d 990, 997, rehearing en banc denied, 152 F.3d 937 (11th Cir. 1998)(Even though parents have the unequivocal right to participate in the development of their disabled child's educational program, the School Board is not required to provide the child with an educational program conforming to the dictates of the parents.); Doe v. Alabama, State Department of Education, 915 F.2d 651, 665 (11th Cir. 1990)(A School Board is not required by the IDEA to maximize a student's potential.); Lachman v. Illinois State Board of Education, 852 F.2d 290, 297 (7th cir. 1988)("Rowley and its progeny leave no doubt that parents, no matter how well-motivated, do not have a right . . . to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child."); A.S., 727 So. 2d at 1074("[I]f a student progresses in a school district's program, the courts should not examine whether another method might produce additional or maximum benefits" to a disabled child.")

44. On the basis of the findings of facts herein, in light of the legal authority discussed above and consistent with the applicable procedural and substantive requirements, the School Board provided [REDACTED] with a free appropriate public education during the third and fourth grade at [REDACTED].

#### CONCLUSION



Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested by [REDACTED] on behalf of [REDACTED] is denied.

DONE AND ORDERED this 5th day of August, 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 5th day of August, 2005.

ENDNOTES


<sup>1/</sup> The file of the Division of Administrative Hearings in DOAH Case No. 03-4481E contains a letter from A.K. dated February 17, 2004, in which she stated: "As a result of local conflict resolution and a comprehensive evaluation being completed resulting in the development of an IEP, I am withdrawing my request for a due process hearing at this time for the issues described on my 11/26/03 due process request for hearing form." A Final Order dismissing the case was entered February 23, 2004.

<sup>2/</sup> Ms. [REDACTED] noted on the Progress Report issued May 20, 2004, that [REDACTED] had a "D+" in science and included the comment that [REDACTED] "owes a science fair assignment."

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.