

Miami-Dade County School District  
No. 05-1150E  
Initiated by: Parent  
Hearing Officer: Robert E. Meale  
Date of Final Order: August 15, 2005

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████ )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 05-1150E  
 )  
MIAMI-DADE COUNTY SCHOOL )  
BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Miami, Florida, on May 31, 2005.

APPEARANCE

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

For Respondent: Melinda L. McNichols  
Assistant School Board Attorney  
1450 Northeast Second Avenue  
Suite 400  
Miami, Florida 33132

STATEMENT OF THE ISSUES

The issues are whether the student remains eligible for special education services and, if so, whether Respondent's

proposed transfer of [REDACTED] to [REDACTED] will provide the student with a free appropriate public education in the least restrictive environment.

PRELIMINARY STATEMENT

By Request for Due Process Hearing Form filed March 28, 2005, Petitioner's mother stated that Petitioner has been attending [REDACTED] and she would like [REDACTED] to remain at this school, notwithstanding a recent charge of battery against a school employee--Petitioner's mother. The request adds that an alternative resolution would be to allow Petitioner to attend [REDACTED] home school, which is [REDACTED].

The case was originally set for final hearing on May 11, 2005, but, at the request of Petitioner and over the objection of Respondent, the Administrative Law Judge continued the case to May 31, 2005, due to the Petitioner's lack of preparation. Respondent ordered a transcript of the hearing, and the court reporter filed the transcript approximately 60 days after the hearing.

At the hearing, Petitioner called two witnesses and offered into evidence no exhibits. Respondent called 12 witnesses and offered into evidence 11 exhibits: Respondent Exhibits 1-11. All exhibits were admitted.

The court reporter filed the transcript on July 27, 2005. The parties filed their post-hearing filings by August 8, 2005.

FINDINGS OF FACT

1. [REDACTED] who was born on [REDACTED], attended tenth grade at [REDACTED] during the 2004-05 school year. Respondent has classified [REDACTED] as having a specific learning disability (SLD). However, [REDACTED] has not received exceptional student education services (ESE) for several years for SLD because [REDACTED] has not required such services. Accordingly, [REDACTED] has been fully mainstreamed in general education classes while attending [REDACTED].

2. [REDACTED] is an alternative school that delivers educational services on a small scale. The school is typically for students having difficulty achieving. School staff include one psychologist and six guidance counselors.

3. [REDACTED] is a voluntary placement at [REDACTED] [REDACTED] mother enrolled [REDACTED] at [REDACTED] starting in ninth grade because she works at the school and believes the school provides the structure necessary for her children to succeed academically. She has enrolled at least one of [REDACTED]'s siblings at [REDACTED].

4. [REDACTED]'s mother is employed at [REDACTED] as a security monitor. Security monitors maintain the security of the school primarily by their presence at various locations throughout the school campus. Teachers and administrators may summon school monitors for assistance in handling behavioral problems in

classrooms or elsewhere in the school. Unless summoned for backup for a school resource officer, security monitors, who appear to have minimal training, assume responsibility primarily for those behavioral problems that fall between what a teacher can handle while teaching a class and what a school resource officer is required to handle.

5. On January 28, 2005, [REDACTED] was present in [REDACTED] American history class, which was being taught by [REDACTED] who had been teaching this class for only a couple of weeks. Mr. [REDACTED] had taught [REDACTED] in a science class the prior school year.

6. At one point, Mr. [REDACTED] testified that [REDACTED] was not the worst-behaving student in the class, but [REDACTED] was among them. At another point, Mr. [REDACTED] testified that, but for the incident described below, [REDACTED]'s behavior was typical of the behavior of the students in the class. The latter testimony emerged on cross-examination and is more credible. However, earlier in the school year, in an incident not involving Mr. [REDACTED] [REDACTED] had served a ten-day suspension for a violation of the school's drug policy. As evidenced by a sharp decline in grades from ninth grade to the first semester of tenth grade, [REDACTED]'s behavior was deteriorating during the 2004-05 school year.

7. ██████'s behavior in Mr. ██████' class had been somewhat of a problem. On one occasion prior to January 28, 2005, ██████ had misbehaved sufficiently to warrant a referral. Knowing that ██████'s mother was a security monitor, Mr. ██████ did not write a referral, but instead summoned ██████'s mother, who calmed down her ██████ without incident.

8. On January 28, ██████ again disrupted the class. Mr. ██████ yelled for a nearby security monitor, who entered the classroom and quickly calmed ██████ who had remained in ██████ seat throughout the incident. A few minutes later, when ██████ acted up again, Mr. ██████ instructed the security monitor to summon ██████'s mother to ██████ classroom to calm down her ██████, whose disruptive behavior was still not sufficient to warrant a referral.

9. After ██████ heard Mr. ██████ call for ██████'s mother, the student became agitated and swore aloud. A few moments later, ██████'s mother entered the classroom, walked directly to her ██████, and, in derogation of School Board rules and in front of ██████'s peers, initiated contact with ██████ by firmly grabbing ██████ shoulder in an angry attempt to force ██████ to cease ██████ misbehavior in class.

10. Upon being grabbed, ██████ reflexively slapped ██████ mother hard on the side of the face. The force of the blow

forced the large woman to lose her balance momentarily. A third security monitor had followed ██████'s mother into the classroom. Upon hearing the commotion, a nearby teacher entered the room. A couple of adults grabbed ██████ who had pulled ██████ mother's jacket over her head, to prevent ██████ from hitting ██████ mother again. ██████ pushed away one of the adults, a security guard, screaming, "get your fucking hands off me." A couple of adults restrained ██████'s mother, who evidently was intent on continuing the altercation with her ██████.

11. The nearby teacher succeeded in pushing ██████ out the door, where ██████ became enraged at the teacher. By now, an assistant principal and school resource officer had reached the classroom. The school resource officer handcuffed ██████ and escorted ██████ to the assistant principal's office. When asked why ██████ had behaved as ██████ had, ██████ said that ██████ mother had hit ██████.

12. Because ██████'s mother refused to press charges, the matter was handled at the school exclusively. The principal eventually imposed a ten-day suspension with a recommendation for expulsion. Some confusion ensued, so that ██████ appeared at school early the following week, in apparent violation of the suspension order. However, the school had failed to inform ██████ and ██████ mother unambiguously of the term and

conditions of the suspension, so this apparent violation was not the fault of the student or relevant to this case.

13. While ██████████ was serving the suspension, ██████████ mother withdrew ██████████ from school and placed ██████████ at ██████████ a school for runaway and incorrigible children. The record does not reveal ██████████'s performance and behavior for the rest of the 2004-05 school year.

14. On March 15, 2005, an Individual Educational Plan (IEP) meeting took place to determine if the January 28 incident had been a manifestation of ██████████'s disability and, if so, to prepare a new IEP. Finding that ██████████'s then-existing IEP lacked any behavioral intervention plan (BIP), although also finding that a BIP had not been necessary prior to the incident, the IEP team determined that the incident was a manifestation of ██████████ disability and ██████████ existing IEP was not appropriate due to the absence of a BIP. The IEP team prepared a new IEP and a BIP, both dated March 15, 2005.

15. Rightly ignoring ██████████'s ongoing SLD classification, which had long been obsolete, the IEP team placed ██████████ in a varying exceptionalities/general education program and prepared a fairly simple BIP. However, nothing in this record and nothing before the IEP team on March 15, 2005, linked ██████████'s growing academic and behavioral problems, including the January 28 incident, to any ESE classification.

Neither the present record nor the IEP team had the kind of information, such as psychological reports, necessary for an informed classification of a student.

16. It appears instead that the March 15 IEP team tried to spare ██████ an expulsion from the entire school system by inferring an ESE classification from ██████ behavior on January 28 and then determining that ██████ behavior on that day was a manifestation of this disability. However understandable the effort by the IEP team, due to the excessive reliance of the classroom teacher on ██████'s mother to supervise her ██████ in the classroom and, more importantly, the mishandling of the intervention by ██████'s mother on January 28, this circular reading unfortunately has taken the place of a disciplined, informed eligibility determination that would investigate the relationship, if any, between any ESE-classified disability that ██████ manifests, on the one hand, and, on the other hand, the January 28 incident and ██████ deteriorating behavior and classroom performance.

17. After the March 15 IEP was developed, the process turned to finding a school that would be acceptable to Respondent, ██████'s mother, and ██████ ██████ and ██████ mother preferred that ██████ remain at ██████. Although the principal testified that ██████ was welcome to return, ██████ was clearly not on the same page as Respondent's other



witnesses, who sensibly expressed concern about the precedent of allowing a student to return to the site where [REDACTED] had hit a school employee. Overshadowing even this problem with returning [REDACTED] to [REDACTED] is the problem of [REDACTED] attending a school at which [REDACTED] mother is a security monitor. [REDACTED]'s mother has refused to solve this problem by accepting a reassignment to another school, even though she complains that the administration at [REDACTED] is out to get her.

18. After mutually rejecting several alternatives (including [REDACTED] as too distant from [REDACTED]'s home), [REDACTED] and [REDACTED] mother want [REDACTED] to attend [REDACTED] or [REDACTED] in that order, and Respondent wants [REDACTED] to attend [REDACTED] which is a small outreach program of mostly voluntary placements. [REDACTED] which consists of four portable classrooms adjoining the juvenile detention center, contains 60-70 middle- and high-school students with an itinerant ESE teacher, but no psychologist or counselor employed by Respondent present at the school. [REDACTED] is a large school with classes averaging 30-35 students.

19. Apart from the presence of [REDACTED]'s mother, [REDACTED] would have been an ideal placement after the January 28 incident, if [REDACTED] had been attending [REDACTED] home school at the time of the incident. By placing her [REDACTED] at an alternative school in the first place, [REDACTED]'s mother has

significantly limited the pool of available alternative placements, should such a placement become necessary.

20. However, two facts drive the determination of the proper school for ██████████ to attend for the 2005-06 school year. First, neither ██████████ nor Respondent challenged the March 15 manifestation determination, so Respondent's decision not to expel ██████████ from the school system for the January 28 incident means that ██████████ remains in the school system. Second, the record fails to demonstrate that ██████████ is eligible for ESE services, so ██████████'s challenge to Respondent's ESE-driven alternative to ██████████ home school must be sustained.

#### CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569, 120.57(1), and 1003.57(5), Fla. Stat. (2005).

22. Pursuant to Section 1001.42(4)(1), Florida Statutes, Respondent is required to provide an appropriate program of special instruction, facility, and services for ESE students.

23. However, Section 1003.57(5), Florida Statutes, provides:

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.

24. Florida Administrative Code Rule 6A-6.0331(2) requires a School Board to try to resolve a student's behavioral problems "through appropriate interventions . . . in the general education environment prior to a referral for evaluation to determine eligibility as a student with a disability," although this requirement may be waived if the student displays "severe social/behavioral deficits that require immediate intervention to prevent harm to the student or others." The evidence fails to establish that ██████ meets this standard. To the contrary, although ██████ behavior was becoming increasingly troubling during the school year, the severity of the January 28 incident was clearly an anomaly.

25. Florida Administrative Code Rule 6A-6.0331(2)(a) therefore requires at least two parent conferences to discuss behavioral issues, Rule 6A-6.0331(2)(b) requires at least two sets of anecdotal reports or observations of the student; Rule 6A-6.0331(2)(c) requires the review of all achievement, psychological, and social data in the student's records; Rule 6A-6.0331(2)(e) requires that other causes, such as hearing or speech, deficits be ruled out as a cause for the misbehavior; and Rule 6A-6.0331(2)(f) requires at least two general-education interventions, such as changing the teacher.

26. Respondent has failed to comply with any of the cited rules, apart from the preparation of one anecdotal report. This failure is material. At this point, Respondent has not explored all non-ESE alternatives or informed itself adequately so that it can provide a suitable ESE placement, if one is necessary.

27. At this point, Respondent may not place ██████████ in a more restrictive environment based on the January 28 incident. Absent additional information, there is no longer any basis for ██████████ to continue to receive ESE services, although a comprehensive workup, including analysis of whether any SLD may contribute to ██████████'s frustration in the classroom and misbehavior, may later justify the provision of ESE services to reverse the kind academic and behavioral deterioration that ██████████ experienced during the 2004-05 school year.

ORDER

It is

ORDERED that the March 15, 2005, IEP fails to provide ██████████ with a free appropriate public education because:  
1) the record fails to support any ESE classification and, thus, the provision of any ESE services and 2) Respondent failed to comply with the rules governing ESE placements for students behavioral problems.

DONE AND ORDERED this 15th day of August, 2005, in Tallahassee, Leon County, Florida.

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ROBERT E. MEALE  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of August, 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.