

St. Johns County School District
No. 02-0419E
Initiated by: Parent
Hearing Officer: Stephen F. Dean
Date of Final Order: August 29, 2005

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████,)	
)	
Petitioner,)	
)	
vs.)	Case No. 02-0419E
)	
ST. JOHNS COUNTY SCHOOL BOARD,)	
)	
Respondent.)	
_____)	

FINAL ORDER

A hearing was held pursuant to notice in the above-styled cause by Stephen F. Dean, assigned Administrative Law Judge, of the Division of Administrative Hearings on April 26-29, 2005, in St. Augustine, Florida.

APPEARANCES

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

For Respondent: Sidney M. Nowell, Esquire
Knight, Dwyer & Nowell, P.A.
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1100 East Moody Boulevard
Bunnell, Florida 32110

STATEMENT OF THE ISSUE

The ultimate issue is whether the Respondent provided the Petitioner with a Free and Appropriate Public Education (FAPE).

PRELIMINARY STATEMENT

Petitioner filed a petition for a due process hearing. This matter was referred to the Division of Administrative Hearings (DOAH) to conduct the formal hearing on February 6, 2002. The case was set for formal hearing on February 28, 2002, by notice dated February 12, 2002. The hearing was continued on the motion of the Respondent, and the case placed in abeyance. On March 20, 2002, the Petitioner requested the matter be rescheduled in June, and although the docket does not reflect rescheduling, the Petitioner requested a continuance on June 12, 2002. On March 27, 2003, the Petitioner moved to reschedule the hearing; both parties provided hearing dates by letter in April; and the matter was rescheduled for formal hearing on August 28 and 29, 2003. The Respondent moved to continue the hearing on July 3, 2003, and the matter was reset for hearing on September 23 through 25, 2003. The Petitioner moved to continue that hearing, and the matter was reset for December 2 through 4, 2003.

A hearing was commenced on December 2, 2003, which became a prehearing conference in actuality, at which an effort was made to determine what the Petitioner sought. It was learned that the case involved actions that had occurred in 2002, and that

the Petitioner was living and attending school in another school district at the time the hearing was convened. Because the Petitioner no longer lived in the Respondent's district, it was determined that the only viable issue to be litigated was whether the Respondent was providing FAPE at the time the Petitioner was removed from the Respondent's school district. It was further determined that the only relief that could be granted, if any, were the costs of private school incurred after the Petitioner was removed from the Respondent's school and before ■ was enrolled in the Putnam County School District.

The Petitioner's ■ was satisfied with ■ education in the Putnam County Schools and was only interested in recovery of ■ costs incurred previously. ■ case was based upon the alleged failure of the Respondent to meet the Petitioner's needs as an emotionally disabled student. To present ■ case, the Petitioner required the expert testimony of a psychologist who had examined the Petitioner; however, Petitioner was unable to find this man at the time of the hearing. The matter was abated to permit the Petitioner to locate this witness.

On March 23, 2004, the matter was set for hearing on May 11 through 13, 2004. After receiving notice, the Petitioner wrote a letter advising that the psychologist could not be located, and the Respondent moved to dismiss the case based upon the necessity of the witness to substantiate the Petitioner's claim.

A hearing on the motion to dismiss and Petitioner's motion to dismiss the motion to dismiss was heard, which resulted in the hearing scheduled for May 11, 2004 being continued until August 10 through 12, 2004. This hearing was continued until August 31 through September 2, 2004, to permit the undersigned to visit [REDACTED] [REDACTED] prior to their call to active duty and deployment with the [REDACTED].

The hearing scheduled for August 31, 2004, was subsequently continued to November 18 and 19, 2004, because a school board witness was called to military duty. Thereafter, the Respondent moved to continue that hearing and the matter was rescheduled until January 19 and 20, 2005. Before that hearing could be held, issues arose about the Petitioner's responding to a request for a more definite statement. A status conference was held, and as a result thereof, the matter was once again continued to April 26 through 29, 2005.

The hearing was convened, and the Petitioner called seven witnesses, and introduced 65 exhibits. In addition, by stipulation, the Petitioner's cumulative file was received into evidence from the Respondent. The Petitioner's [REDACTED], who had represented [REDACTED] throughout these proceedings, continued to present Petitioner's case for two and one-half of the three days scheduled for the hearing. When advised that [REDACTED] would have to conclude [REDACTED] presentation by a time certain in order to permit

the Respondent to present its case, ■ became upset and, notwithstanding being advised that the hearing would reconvene and proceed without ■, elected to absent ■. The Respondent called three witnesses in its behalf, and rested its case.

A five-volume transcript was ordered and filed on May 17, 2005. The Respondent's counsel indicated by letter ■ intent to file a proposed order on or before June 23, 2005. The undersigned was out of the country from June 25, 2005 until July 26, 2005. The Respondent's counsel indicated by letter that his proposed order would be filed no later than August 12, 2005, and an order was entered on August 10, 2005, directing that orders be filed not later than August 12, 2005. The Respondent's counsel then requested an extension for filing due to a death in ■ family until August 17, 2005, and the time was extended by order dated August 15, 2005. The Petitioner received copies of all the letters from the Respondent's counsel and the Order dated August 15, 2005.

Both parties were afforded the opportunity to file a proposed final order.

The Respondent filed a proposed final order that was read and considered. At no time has the Petitioner filed any pleadings since the conclusion of the hearing, although

telephone calls to DOAH indicated that [REDACTED] was aware that proposed orders were due.

FINDINGS OF FACT

1. The Respondent is the St. Johns County School District, which encompasses all of St. Johns County, Florida. It is the state's educational agent for said county.

2. The Petitioner was born on [REDACTED] 19[REDACTED] [REDACTED] was enrolled in the St. Johns County School District when this case arose in January 2002 and had been attending the eighth grade at [REDACTED] [REDACTED]. [REDACTED] attended the last half of the eighth grade at [REDACTED], and completed the 9th grade at that school the following school year (2002-2003). [REDACTED] was enrolled in the Putnam County School District for the school year 2003-2004 and completed the tenth grade. [REDACTED] is currently enrolled in the Putnam Country School District and is in the eleventh grade.

3. The Petitioner academic achievement at the [REDACTED] was in the B-C letter-grade range. [REDACTED] performance in the Putnam County schools has been average to slightly below average.

4. The Petitioner was determined to have an emotional handicap in 1998 and Attention Deficit and Hyperactivity Disorder (ADHD). [REDACTED] was determined to be qualified for special educational services. The Petitioner had a history of non-compliance and defiance at home and school.

5. Individual Educational Plans (IEPs) had been developed in accordance with applicable rules and guidelines by Respondent. Because of prior problems, the IEP in effect in the school year 2001-2002 restricted the use of restraints by staff and faculty during confrontations between the Petitioner and staff and faculty. The School Resource Officer, a deputy sheriff assigned to the school, was designated to be called and deal with Petitioner when confrontations occurred. This was because the Petitioner's [REDACTED] was at the time a [REDACTED] in St. Johns County, and requested this.

6. On January 30, 2002, the Petitioner had a confrontation with the Dean of [REDACTED] at [REDACTED], Barry T. Williams. At the time, there was a scheduled assembly of students, and Dean Williams told the Petitioner he could not wear headphones into the assembly. The Petitioner refused to take the headphones off, and was told by Dean Williams to report to the office. The Petitioner refused and physically assaulted Dean Williams.

7. At that time, the school resource officer was not at the school, although [REDACTED] was scheduled to be there.

8. Dean Williams restrained the Petitioner and took [REDACTED] to the office, where the Petitioner spit a piece of gum at Dean Williams. The Petitioner's actions prevented Dean Williams from attending the assembly.

9. This incident was witnessed by a number of school personnel, and it is clear that this assault occurred.

10. Due to [REDACTED] conduct, the Petitioner was recommended for suspension for three days. The period of suspension initially recommended was more; however, Petitioner's prior suspensions limited the number of days of suspension that could be imposed to three. None of the suspension was served because the Petitioner was withdrawn from school by [REDACTED] [REDACTED], who enrolled [REDACTED] in [REDACTED].

11. Although the suspension was never served because the Petitioner withdrew from the Respondent's schools, the discipline imposed was appropriate, was within the guidelines for such misbehavior, and the Petitioner received procedural due process to the extent that it was possible under the circumstances of the withdrawal.

12. IEPs were prepared by the Respondent for the Petitioner in which the Petitioner's [REDACTED] participated. The record reveals that the Petitioner's [REDACTED] was involved in [REDACTED]'s education. These IEPs were introduced as part of the Petitioner's cumulative educational file, and testimony was received concerning their preparation and implementation.

13. The IEPs were appropriate and were appropriately implemented. The record indicates that the Petitioner's classes and classroom assignments were consistent with placing [REDACTED] in

the least restrictive environment in which ■ could receive a free and appropriate public education. ■ academic reports and subsequent performance at ■ and in the Putnam County School District reflect that the Petitioner received educational benefit from ■ IEP and its implementation in Respondent's district.

14. The expectation that Dean Williams should consent to being assaulted because the school resource officer was not on campus to restrain the Petitioner is absurd. Dean Williams' taking immediate action to terminate the assault and to remove the Petitioner to the school office is consistent with the child's IEP and consistent with the Respondent's obligations and responsibilities to protect students, teachers and staff from such conduct.

15. The Petitioner's mother advised the district of ■ intent to withdraw the Petitioner and place ■ in private school because ■ was not receiving FAPE.

16. There is an indication that the Respondent was late in scheduling the re-evaluation of the Petitioner in ■ last school year. This delay did not appreciably alter the decisions about ■ IEP or the services provided.

17. Any defects in the IEPs were of a technical nature, and did not deprive the student of a substantial educational

benefit consistent with the Respondent's obligations to provide FAPE.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding.

19. The exact nature of the Petitioner's claim was difficult to discern. It was very difficult to get the Petitioner's representative to define the nature of the complaint, the relief being sought, and the law under which relief was being sought. The case is treated as a case arising under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400, et seq., and Section 1003.57, Florida Statutes, and its implementing rules, Florida Administrative Code Rule 6A-6.03311.

20. The burden is upon the Petitioner to show an entitlement to relief. See Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla.1st DCA 1977).

21. The Respondent argues that the Petitioner is not now a resident of Respondent's district and cannot bring an action for relief. The Petitioner may not seek current educational services as a resident of another district; however, this does not work to preclude the Petitioner's mother from seeking money paid for educational services upon a showing that said services

were necessary because the Respondent district failed to provide FAPE while the Petitioner was enrolled in the Respondent district.

22. Further, the record indicates that the time that this case was filed, February 6, 2002, the Petitioner resided in the Respondent's district.

23. The issue presented was whether the Respondent provided the Petitioner FAPE. If FAPE was provided, there was no basis for the withdrawal of the Petitioner from Respondent's school and placement of the Petitioner in a private school. The question of whether FAPE is provided is more than an examination of IEPs and assessment of the student's progress. The educational agency does not have to provide a "Cadillac" educational experience. It must provide educational opportunities reasonably calculated to enable the student to receive educational benefits. The record in this case indicates that this was done.

24. In this case, there were many IEPs prepared. They were prepared with the participation of the Petitioner's mother. They appropriately addressed mainstreaming the student and placing ■■■ in as many regular classes as was consistent with ■■■ limitations. The Petitioner was evaluated prior to preparation of the initial IEP in 1998. ■■■ would have been due for re-evaluation in 2001. There was evidence that this

evaluation was delayed, but had been scheduled prior to [REDACTED] withdrawal.

25. The Respondent must adhere to the procedural requirements of the IDEA; however, in assessing procedural deficiencies, the criteria is whether the procedural deficiency prevented delivery of FAPE. This recognizes that the focus is on the result and not the process. There is no indication that the failure to re-evaluate denied the Petitioner FAPE.

26. It is concluded that the Respondent provided FAPE to the Petitioner up to [REDACTED] withdrawal from Respondent's school, and there was no basis for reimbursing the Petitioner for the private educational services [REDACTED] received.

FINAL ORDER

Based upon the forgoing Findings of Fact and Conclusions of Law, it is

ORDERED:

That the Petition be dismissed.

DONE AND ORDERED this 29th day of August, 2005, in Tallahassee, Leon County, Florida.

S

STEPHEN F. DEAN
Administrative Law Judge
Division of Administrative Hearings
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1230 Apalachee Parkway
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Filed with the Clerk of the
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this 29th 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.