Broward County School District
No. 04-1553E
Initiated by: Parent
Hearing Officer: J. D. Parrish
Date of Final Order: August 2, 2004

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted])
)
Petitioner,)
)
vs.) Case No. 04-1553E
)
BROWARD COUNTY SCHOOL BOARD,)
)
Respondent.)
)

FINAL ORDER

Pursuant to notice a formal hearing was held in this case on May 27-28, 2004, by video teleconference with the parties appearing from Fort Lauderdale, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: [redacted] was represented by parent, [redacted]
(Address of record)

For Respondent: Edward J. Marko, Esquire
Broward County School Board
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUE

Whether the Respondent failed to provide the student, the Petitioner herein, with a free appropriate public education (FAPE) and, if so, whether the Petitioner is entitled to recover

the expenses of enrollment of the student at the [redacted]

[redacted] [redacted].

PRELIMINARY STATEMENT

On April 23, 2004, the School Board of Broward County, Florida (Respondent or Board), received a request for a due process hearing filed by the parents of Petitioner, [redacted] a student enrolled in the Broward County public schools. The request form stated that the parents did not believe the student was receiving an appropriate public education and that the student required a school specializing in children with ADHD to address [redacted] social, behavioral and academic needs.

Subsequently the parties elected to participate in informal mediation efforts that delayed the formal hearing in this cause. The formal hearing, conducted on May 27-28, 2004, was conducted with the agreement of all parties by video teleconference.

At the hearing, the Petitioner presented testimony from the student's father, stepmother, and a clinical psychologist (the names of these individuals are not listed to protect the Petitioner's confidentiality). The Petitioner's Exhibits 1-6 were admitted into evidence.

The Respondent offered testimony from Jacqueline Jones, an ESE facilitator; Mary DeArmas, a math instructor; Traci Lenfest, a language arts teacher; Catherine Schubert, an ESE specialist; Dr. Lisa DeMeritt, a behavior support specialist; Jill Fiorentino, an assistant principal; Dr. Earnest Carlton, a school psychologist; Dilia Castro, a family counselor; and Linda Pogoda, a social studies teacher. The Respondent's Exhibits 1-7 were

also received in evidence. The parties submitted a joint exhibit (the Individual Education Plan dated 3/31/04) that has also been admitted into evidence.

The transcript of the proceedings was filed on June 16, 2004. Thereafter, both parties timely filed Proposed Final Orders that have been fully considered in the preparation of this Final Order. The Proposed Final Orders were filed on June 28, 2004.

FINDINGS OF FACT

1. The Respondent is the public agency charged with the responsibility of operating public schools and educating students attending schools within the Broward County School District.

2. The Petitioner, [redacted] is a [redacted] grade student whose date of birth is [redacted]. The student resides with [redacted] and is eligible to attend Broward County public schools.

3. In fact, the Petitioner first enrolled in Broward County public schools during [redacted] second grade school year. [redacted] attended [redacted] for second and third grades. Prior to that time the student had been enrolled in the Miami-Dade County public schools.

4. At all times material to this matter the Petitioner has been eligible for exceptional student education (ESE) services. The parties do not dispute the student's eligibility for ESE services. Their dispute centers on whether the individual education plan (IEP) at issue provided the Petitioner with a FAPE. It is the Petitioner's contention that it did not.

5. By way of background, the Petitioner was diagnosed with

emotional disabilities and placed in an ESE pre-kindergarten program when was four years old. Although the Petitioner has had several psychoeducational evaluations that have produced varying results, it is undisputed that the student has significant behavioral issues that interfere with ability to access educational opportunities. How best to address those issues continues to be the crux of the parent's concerns.

6. During the 2002-2003 school year the Petitioner attended . () for grade. The IEP for the following school year (2003-2004) was developed at on April 19, 2003 (the IEP).

7. It was anticipated that the IEP would be implemented at . () starting in the fall of 2003. In fact, the Petitioner completed grade at and enrolled in the grade at . next IEP was scheduled to be developed in April 2004.

8. Typically, IEPs are developed annually. Unless a parent or school personnel determine the student requires an interim review or service not set forth in the IEP, the rules governing ESE students do not require a more frequent development of IEPs. Thus, it is customary for the IEP developed in any year to carry over to the subsequent school year until it is revisited and revised. Similarly, the evaluation of ESE students is generally performed according to the guidelines set forth by rule.

9. It is undisputed that the IEP was timely developed. It is further undisputed that the Petitioner did not challenge the adequacy of the IEP at the time it

was developed.

10. The Petitioner now challenges the [redacted] IEP and alleges it was not appropriately implemented at [redacted] and was inadequate to meet the student's needs.

11. On March 19, 2004, the Petitioner's [redacted] sent a letter to [redacted] that alleged the student was not receiving an appropriate program and that the student would be placed in a private school.

12. On March 31, 2004, the parties participated in an IEP meeting to attempt to resolve the parents' concerns expressed by the March 19, 2004, letter. If revisions to the [redacted] IEP could resolve the issues, it would obviate the need to remove the student from the public school. Although the parties did develop a new IEP ([redacted] IEP) that set appropriate goals for the student, they did not resolve the issues related to [redacted] behavior. Subsequently, the parent withdrew the student from public school.

13. At the time of hearing, the student was attending a private school known in this record as the [redacted] ([redacted]). The parents have incurred a cost of $5,150.00

for the 2004 school year. The parents seek to recoup that expense.

14. Additionally, the parents believe that the Matrix of Services should reflect a higher rating for the Petitioner so that they will receive more money to offset the tuition at [redacted] in the future. The McKay Scholarship could offset the expense incurred by the family. The family has already applied for this scholarship for the 2004-2005 school year.

15. Prior to March 19, 2004, the parents had not requested conferences, IEP meetings, or shared any concerns regarding the Petitioner's education with school personnel.

16. Similarly, the Petitioner's private clinical psychologist did not consult with any of the [redacted] personnel to address the student's behavioral difficulties or needs.

17. While at [redacted], the Petitioner was enrolled in a general education setting. [redacted] received ESE support services from an ESE facilitator and a family counselor. Additionally, the School District's zone behavior specialist was available for consultation to the school and the parents.

18. Prior to March 19, 2004, the Petitioner's parents did not express any concern related to the Petitioner's academic performance or behavior.

19. In contrast, the ESE support facilitator contacted the parent regarding the student's declining grade in math. According to the math teacher, the Petitioner was a bright student with no behavior problems in her class. [redacted] was,

however, not completing homework and preparing for quizzes. grade, therefore, was dropping from the expected "C." The slip in grade was not attributable to any in-class behavioral issue.

20. Similarly, the Petitioner's language arts teacher represented the student did not pose a behavioral problem in her class. The Petitioner participated, paid attention, answered questions, worked cooperatively with peers, and made academic progress prior to March 19, 2004. Although easily distracted, the student was easily redirected to work.

21. The Petitioner also appropriately participated in social studies class without exhibiting inappropriate behaviors. The student improved grade and made social progress prior to March 19, 2004.

22. Prior to March 19, 2004, the Petitioner exhibited poor behavior in unstructured settings such as the cafeteria. On more than one occasion the Petitioner was removed from the cafeteria and placed elsewhere to have lunch. At first this was done as a consequence for misbehavior in the cafeteria, but it continued because the student requested to have lunch in the school office.

23. The Respondent utilizes two forms of suspensions for students who misbehave. The first form is on-site, within the school. The second form (considered for more severe misbehaviors) is off-site and is known in this record as "JET."

24. In October 2003, the Petitioner was sent to JET. The appropriateness of the JET placement was not disputed or

questioned at the time. This incident was the only behavioral concern that rose to the level requiring off site intervention.

25. Compared to other students with disciplinary problems (related to emotional handicaps), the school personnel have considered the Petitioner's behavior at school to be of a low frequency and low intensity. The Petitioner never exhibited any behaviors at school that suggested the student was in "crisis." To the contrary, all teachers represented that the Petitioner responded well to redirection. Their assessment has been deemed credible.

26. All school personnel opined that the IEP and the IEP were calculated to provide the student with FAPE. The Petitioner has made academic progress and has progressed from grade to grade without serious incidents.

27. The parent believes the student should be required to master goals of the IEP at 100 percent rather than 75 percent because maintains will need to do things all the time to be successful in the real world. Similarly, the parent believes this student should be able to take care of daily living needs (like brushing teeth) without prompting from others. It is unlikely this or any grader (handicapped or not) could achieve a goal of 100 percent or complete all daily living needs without prompts.

28. Most of the oppositional behaviors described by the parents for the student's home behavior have not been witnessed within the school environment.

29. The tensions within the student's home and the

resulting behavior problems were not disclosed to the school personnel until late March 2004. The Respondent maintains that the student was making meaningful academic progress in the least restrictive environment. Accordingly, the [redacted] IEP provided for continued placement in the general educational setting. It is concluded that the [redacted] setting was appropriate for the student.

30. Since the Petitioner was placed at [redacted], [redacted] home behaviors have improved. Additionally, the student is making academic progress at [redacted], and it is the parents' desire that [redacted] continue in that environment.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. § 1003.57(5), Fla. Stat.

32. The Petitioner has the burden of proof in this cause to establish that the student was not receiving FAPE. That burden has not been met. In this case the Respondent has shown that both IEPs were reasonably calculated to enable this student to receive a meaningful educational benefit. In short, the student did make academic progress. Moreover, [redacted] behavior at school was acceptable.

33. Apparently, the student's behavior at home deteriorated to the point that the parents felt something had to be done to save their family. With others in the home to consider, the Petitioner's misbehavior could not be ignored. It is not doubted that the student was making the lives of the family members

difficult. Nevertheless, it is concluded that the student's IEP was being implemented to assure academic progress.

34. Nothing in federal or state law requires that the Respondent provide a guaranty for Petitioner's academic achievement. This Petitioner was offered an IEP that provided for an educational benefit and, in this case, the student made academic progress. This Petitioner may achieve a higher performance at ███████████████. █████ at-home misbehaviors may be reduced or more easily de-escalated. That ██ achieves a higher level of academic performance is commendable. It does not equate to the public school district having failed or being required by law to reimburse the parents for such achievement.

35. The courts have unambiguously set forth the legal tenets applicable to this matter. In Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), the Supreme Court held that when the IEP is reasonably calculated to enable the child to receive an education benefit there is no requirement that the student's potential be maximized. The Rowley principle has been adopted in Florida. See School Board of Martin County v. A.S., 727 So. 2d 1071 (Fla. 4th DCA 1999) and Hendry County School Board v. Kujawski, 498 So. 2d 566 (Fla. 2d DCA 1986).

36. In this case it is concluded that the Petitioner's IEPs offered an educational opportunity as required by law which were, and could be, implemented in the least restrictive environment.

37. Section 1003.57(6), Florida Statutes (2003), requires the Respondent to offer this Petitioner an educational

opportunity in a general education setting. The provision states:

> 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.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petitioner's claim for reimbursement for the expenses incurred for the [redacted] are denied.

DONE AND ORDERED this 2nd day of August 2004, in Tallahassee, Leon County, Florida.

S

J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of August, 2004.

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.