

Orange County School District
No. 04-2678E
Initiated by: Parent
Hearing Officer: Jeff B. Clark
Date of Final Order: September 8, 2004

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████,)
)
Petitioner,)
)
vs.) Case No. 04-2678E
)
ORANGE COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a final administrative hearing in this case on August 18, 2004, in Orlando, Florida.

APPEARANCES

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

For Respondent: Harriet P. Brown, Esquire
Orange County School Board
445 West Amelia Street
Post Office Box 271
Orlando, Florida 32802-0271

STATEMENT OF THE ISSUES

Whether Respondent denied Petitioner's request for an Independent Educational Evaluation ("IEE"); and whether Respondent provided Petitioner appropriate notification for an Individual Education Plan ("IEP") team meeting held on May 20, 2004.

PRELIMINARY STATEMENT

On July 26, 2004, [REDACTED] guardian of Petitioner, [REDACTED] a minor, delivered a Request for Due Process Hearing to Respondent, Orange County School Board. On July 29, 2004, Respondent forwarded the Request for Due Process Hearing to the Division of Administrative Hearings. On July 30, 2004, a Notice of Hearing, scheduling the due Process hearing for August 18, 2004, in Orlando, Florida, and a Procedural Order were entered.

The due process hearing was held as scheduled. [REDACTED] testified on behalf of [REDACTED] ward, Petitioner, [REDACTED] Faye Henderson, Respondent's Exceptional Student Services Director, testified on behalf of Respondent. Petitioner offered four exhibits that were received into evidence and marked Petitioner's Exhibits 1 through 4. Respondent offered nine exhibits that were received into evidence and marked OCSB's Exhibits 1 through 9.

The Transcript of the due process hearing was filed with the Division of Administrative Hearings on August 27, 2004. Respondent filed its Proposed Final Order on September 1, 2004.

FINDINGS OF FACT

1. ██████ whose date of birth is ██████ ██████ 19█████ was a kindergarten student at ██████ Elementary School, a public school in Orange County, Florida, for the 2003-2004 school year.

2. ██████ who is ██████'s aunt and legal guardian, seeks the instant due process hearing.

3. ██████ had previously been determined eligible for services pursuant to the Individuals with Disabilities Education Act. ██████ was classified as "developmentally delayed and language impaired." An IEP was developed for ██████ dated October 27, 2003.

4. In accordance with standard procedures, Respondent psychoeducationally evaluated ██████ on March 25, 2004. This evaluation indicated that ██████'s academic achievement was at or above expectancy for ██████ age and learning ability and that an information processing deficit was not identified. In addition, the test results indicated that ██████'s intellectual functioning was in the "below average" category of cognitive ability.

5. On April 5, 2004, an IEP team meeting was held at ██████'s request. ██████ expressed concern regarding the psychoeducational evaluation results.

6. On April 14, 2004, ██████ requested that Respondent provide a "list of qualified examiners who do not work for the school system."

7. On May 4, 2004, a Parent Notification Letter was sent to ██████ scheduling an IEP team meeting for May 20, 2004. Her reply indicated that she wished "to attend at another time or date." At her request, the IEP team meeting was rescheduled for the same day at 10:00 a.m.

8. On May 15, 2004 ██████ advised Respondent by letter that she wanted an IEE and that she would "be postponing" the IEP team meeting until the IEE was conducted. This letter was received by Respondent on May 19, 2004.

9. An abbreviated IEP team meeting was conducted on May 20, 2004, as scheduled. ██████ did not attend. The IEP team did not discuss eligibility or program dismissal. The IEP team felt that the psychoeducational evaluation was appropriate. A Notice of Refusal to Take a Specific Action form and all related documents were mailed to ██████ on May 27, 2004. In addition, ██████ was advised that the IEP team meeting would be rescheduled at her convenience to further consider the school psychologist's evaluation and any independent evaluation obtained by ██████

10. On June 30, 2004, ██████ filed a due process hearing request seeking an IEE. On July 15, 2004, the parties met,

immediately prior to a scheduled due process hearing, and agreed that Respondent would conduct an IEE and that [REDACTED] would be transferred to a different school.

11. On July 23, 2004, Respondent mailed and faxed [REDACTED] a list of independent evaluators. [REDACTED] did not receive the list. As a result, nothing happened. Since Respondent did not hear from [REDACTED] the IEE was not scheduled.

12. [REDACTED] filed another due process hearing request on July 27, 2004.

13. During her testimony on behalf of Respondent, Faye Henderson, a certified school psychologist and Respondent's Exceptional Student Services Director, who has cognizance over [REDACTED] indicated a continuing willingness to provide an IEE and to place [REDACTED] at [REDACTED] Elementary, the elementary school of [REDACTED]'s choice.

14. Notwithstanding the foregoing assurances, [REDACTED] wanted the undersigned Administrative Law Judge to "enter an order."

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Subsection 1003.57(5), Florida Statutes (2003), and Florida Administrative Code Rule 6A-6.03311(5), and the parties have standing.

16. This case arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq. ("IDEA") and corresponding Florida Statutes, which require public schools to provide exceptional students a free, appropriate public education ("FAPE") as a condition of receiving federal funds.

17. Embracing both procedural and substantive components, the test for determining whether a FAPE was provided is two-fold, requiring consideration of

(1) whether the state actor has complied with the procedures set forth in the IDEA, and (2) whether the IEP developed pursuant to the IDEA is reasonably calculated to enable the child to receive educational benefit.

School Bd. of Collier County, Fla. v. K.C., 285 F.3d 977, 982 (11th Cir. 2002).

18. Petitioner contends that Respondent denied ██████ a FAPE in consequence of procedural and substantive violations of the IDEA in that ██████ has been denied an IEE and that Respondent failed to provide appropriate notice of the May 20, 2004, IEP team meeting.

19. The burden of proof is on Petitioner. Devine v. Indian River County School District, 249 F.3d 1289 (11th Cir. 2001).

20. The Department of Education has adopted rules implementing the IDEA in Florida. Fla. Admin. Code R. 6A-6. The provisions applicable to the development of an IEP are found in Florida Administrative Code Rule 6A-6.03028. IEEs are detailed in Florida Administrative Code Rule 6A-6.03311(4).

21. Florida Administrative Code Rule 6A-6.03028(7) requires that Respondent give Petitioner advance notice of the IEP team

meeting, schedule the meeting at a mutually agreed time and place, and advise Petitioner of the purpose of the meeting. Initial notice of the May 20, 2004, IEP team meeting was given on May 4, 2004. The May 20, 2004, IEP team meeting was rescheduled for Petitioner's convenience. Petitioner thereafter unilaterally "postponed" the IEP team meeting by letter of May 15, 2004, received by Respondent on May 19, 2004. An abbreviated IEP team meeting took place as scheduled in Petitioner's absence.

22. Persuasive evidence indicates that Respondent complied with Florida Administrative Code Rule 6A-6.03028(7). Notwithstanding Respondent's procedural compliance, it has acquiesced to Petitioner's request that the IEP team meeting be rescheduled after Petitioner has an IEE.

23. Respondent had offered Petitioner the IEE suggested by Florida Administrative Code Rule 6A-6.03311(4) prior to the Request for Due Process Hearing in the instant case. This offer was extended on May 15, 2004, and, but for a purported communications failure, would have taken place. In any event, the offer is on-going. Petitioner has Respondent's List of Private Practitioners for Independent Educational Evaluations which was admitted into evidence as OCSB's Exhibit 9.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. Petitioner has failed to demonstrate that the procedural requirements for the May 20, 2004, IEP team meeting were not followed and, therefore, that allegation of the due process hearing request is dismissed; and

2. Respondent has agreed to provide an Independent Educational Evaluation and, accordingly, shall do so. Petitioner should select an evaluator from the List of Private Practitioners for Independent Educational Evaluations provided during the due process hearing, contact Respondent, and allow Respondent to implement the independent evaluation.

DONE AND ORDERED this 8th day of September, 2004, in Tallahassee, Leon County, Florida.

S

JEFF B. CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of September, 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.