

Broward County School District
No. 04-2154E
Initiated by: Parent
Hearing Officer: Florence Snyder Rivas
Date of Final Order: September 17, 2004

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████,)	
)	
Petitioner,)	
)	
vs.)	Case No. 04-2154E
)	
BROWARD COUNTY SCHOOL BOARD,)	
)	
Respondent.)	
_____)	

FINAL ORDER

A formal hearing was conducted in this case on August 4, 2004, by video teleconference at Fort Lauderdale and Tallahassee, Florida, before Florence Snyder Rivas, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

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

STATEMENT OF THE ISSUE

Whether Respondent School Board of Broward County, Florida (Respondent or School Board) correctly determined that Petitioner [REDACTED] (Petitioner or [REDACTED] is not presently eligible for any exceptional student education (ESE) programs or services.

PRELIMINARY STATEMENT

By letter dated June 16, 2004, Petitioner's mother, Mrs. [REDACTED] requested a due process hearing to challenge Respondent's determination, made on that date, that [REDACTED] did not presently met eligibility criteria for ESE services. A final hearing was deferred at the parties' request to afford an opportunity to negotiate a resolution. Discussions failed and in due course the hearing was convened.

FINDINGS OF FACT

Based upon the testimony of the witnesses and the documentary evidence received at the hearing, the following findings of facts are made:

1. At the time of the final hearing, [REDACTED] is an [REDACTED]-year-old [REDACTED] (date of birth [REDACTED] who attended [REDACTED] Elementary as a [REDACTED] grader during the 2003-04 school year.

2. From [REDACTED] through [REDACTED] grade, [REDACTED] received ESE services in the area of speech articulation. More specifically, [REDACTED] was eligible for ESE services by reason of [REDACTED] difficulty in making the "r" and "th" sounds.

3. As an ESE student, planning for the delivery of education services occurred at all relevant times pursuant to an individual education plan (IEP) prepared in substantial compliance with all applicable procedural rules and regulations. At all times material to this case, ■ was aware of ■ right to seek a due process hearing to challenge decisions made by Respondent's educational staff with which she disagreed.

4. As the end of ■ grade year approached, professional staff on ■'s IEP team believed that the problems which had rendered ■ eligible for ESE services had largely resolved.

5. On March ■ 2004, ■'s IEP team met and formally determined that ■ met criteria for dismissal from ESE. Mrs. ■ could have challenged this decision but did not do so.

6. Mrs. ■ did, however, seek out Respondent's Area Speech/Language Program Specialist, ■ to express ■ concern regarding ■'s dismissal from ESE. Mrs. ■ was particularly concerned about reading, an area in which ■ appears to be falling increasingly behind.

7. ■ and Mrs. ■ spoke on May 4, 2004. Thereafter, ■ reviewed ■'s records and informally observed and assessed the student.

8. ■'s investigation confirmed the central finding of the IEP team; i.e., that ■ no longer met eligibility

criteria for ESE services, having substantially overcome the difficulties that had rendered [REDACTED] eligible in [REDACTED] grade.

9. There is no evidence that [REDACTED]'s previous articulation difficulties are related to [REDACTED] current reading difficulties. There was undisputed testimony however, that some children are unable to read at grade level for reasons unrelated to disabilities for which the law requires that ESE services be provided.

10. Such children are not left to fend for themselves. Rather, state law requires that they be provided with an Academic Improvement Plan (AIP) which is reasonably calculated to address the specific problems the student experiences. The AIP must be implemented and the student's progress pursuant to the plan monitored by appropriately credentialed individuals.

11. [REDACTED] has an AIP which addresses [REDACTED] specific weaknesses in the area of reading. The AIP is being appropriately implemented by qualified professionals in a regular education setting, and [REDACTED] is making progress under the plan.

12. Mrs. [REDACTED] lacks confidence that the AIP is sufficient to remedy [REDACTED]'s reading problem and insists [REDACTED] [REDACTED] is a candidate for ESE services.

13. In support of [REDACTED] claim, [REDACTED] has obtained an opinion from a psychologist, Dr. [REDACTED] (Dr [REDACTED] The opinion

does not take into account the ESE eligibility criteria which binds the School Board.

14. Respondent is obliged to consider in good faith the results outside evaluations, and did so here. Respondent may not, as ■ asks, simply defer to Dr. ■'s recommendation that ■ be provided ESE services. With due respect to Dr. ■ he does not purport to work on a regular basis with ESE eligibility criteria and his stated reasons for his opinion that ■ met eligibility criteria did not fare well under cross examination.

15. Dr. ■ does not claim any special expertise in the diagnosis of learning disabilities in the context of educational planning. On the other hand, Respondent's experts are qualified and experienced, and were clear and unambiguous in setting forth the bases for their finding of ineligibility.

16. Unlike Respondent's experts, Dr. ■ does not claim substantial experience in diagnosis and educational planning for students with reading and specific learning disabilities. Accordingly, Dr. ■'s conclusory assertion that ■ meets ESE criteria is rejected, and the unanimous contrary opinions rendered by qualified professionals on Respondent's staff are credited.

17. In so finding, it is noted that school psychologists, as well as other professionals who evaluated ■'s ESE

eligibility, are licensed by the state in their respective disciplines and owe an ethical duty to students they test or teach to render an unbiased professional opinion. In this case, there is no suggestion that the professionals who evaluated [REDACTED] shaded their opinion to attain a particular result.

18. On June [REDACTED] 2004, an appropriately credentialed team was convened to consider Dr. [REDACTED]'s evaluation report. The team properly determined that Petitioner did not meet eligibility criteria for any exceptional student education program.

19. Though not required to do so, the team agreed to reconsider its decision the following month. The team met on July [REDACTED] 2004, reconsidered the evaluation of [REDACTED] and, again, correctly determined that [REDACTED] did not meet ESE eligibility criteria.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Rules 1003.57(5) and 6A-6.03311 (5), Florida Administrative Code.

21. The ESE setting is by its very nature more restrictive than a regular classroom learning environment. ESE serves well the needs of countless disabled students, but it is neither appropriately nor lawfully provided to children who do not suffer from a disability.

22. In this case, the overwhelming weight of credible evidence supports the conclusion that ■■■ does not presently meet ESE eligibility criteria.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's request for ESE placement be denied.

DONE AND ORDERED this 17th day of September, 2004, in Tallahassee, Leon County, Florida.

S

FLORENCE SNYDER RIVAS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th 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.