

Hillsborough County School District  
No. 04-2967E  
Initiated by: Parent  
Hearing Officer: Daniel Manry  
Date of Final Order: December 17, 2004

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 04-2967E  
 )  
HILLSBOROUGH COUNTY SCHOOL )  
BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the due process hearing of this case on September 3 and November 15, 2004, in Tampa, Florida, on behalf of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: No Appearance

For Respondent: Gregory A. Hearing, Esquire  
Allison E. Rehmyer, Esquire  
Thompson, Sizemore & Gonzalez, P.A.  
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STATEMENT OF THE ISSUES

The issues for determination in this proceeding are: whether an existing individual education plan (IEP) that the Orange County School Board developed while Petitioner was in an institutional placement in Orange County, Florida, and that Respondent adopted as a transitional IEP upon Petitioner's transfer to an institutional placement in Hillsborough County, Florida, provides Petitioner with a free appropriate public education (FAPE) within the meaning of 20 U.S.C. Sections 1400, et seq., the Individuals with Disabilities Education Act (IDEA); whether the transfer of Petitioner from Orange County to Hillsborough County denied FAPE to Petitioner and violated relevant procedural safeguards; whether Petitioner should be placed in a residential placement in Manatee County, Florida; and whether Respondent is discriminating against Petitioner.

#### PRELIMINARY STATEMENT

Respondent received a request for due process hearing from Petitioner's father on August 20, 2004. The ALJ scheduled the due process hearing for September 2, 2004, and then, in response to Respondent's motion, rescheduled the hearing for September 3, 2004.

Petitioner's father had previously requested that venue be moved to Manatee County, Florida, where the father resides. On September 3, 2004, Petitioner's father filed another written

motion to continue the hearing and to change the venue of the hearing to Manatee County.

The ALJ convened a due process hearing on September 3, 2004. Petitioner's father did not appear at the hearing. The ALJ, by an ore tenus order entered on the record of the due process hearing, denied the motion for change of venue, but continued the due process hearing until November 15, 2004.

On September 30, 2004, Petitioner's father filed a motion to consolidate this proceeding with the father's appeal of the Final Order issued by ALJ William F. Quattlebaum on March 25, 2004. The motion to consolidate restated the father's request for a change of venue to Manatee County, Florida, and moved to recuse the ALJ from conducting this proceeding.

The ALJ conducted the due process hearing of this proceeding on November 15, 2004. Petitioner's father did not appear at the hearing. The ALJ, by ore tenus order entered on the record, denied the pending motion to consolidate, motion for a change of venue, and motion to recuse the ALJ.

At the due process hearing, Respondent presented the testimony of two witnesses and submitted four exhibits for admission into evidence. The ALJ put into evidence a printed copy of an email received by Respondent from the father indicating, inter alia, that the father would not attend the due process hearing.

The identity of the witnesses and exhibits and the rulings regarding each are set forth in the Transcript to the hearing filed with DOAH on December 8, 2004. Respondent timely filed its proposed final order (PFO) on December 9, 2004. Petitioner's father did not submit a PFO.

#### FINDINGS OF FACT

1. Petitioner is a disabled male child born on [REDACTED]. Petitioner's disability is identified as traumatic brain injury and trainable mentally handicapped.

2. Petitioner currently resides at the [REDACTED] group home in Hillsborough County, Florida [REDACTED]. Petitioner previously resided in the [REDACTED] home in Orange County, Florida [REDACTED]. Petitioner's father does not have physical custody of Petitioner. At all times material to this proceeding, Petitioner's father has resided in Manatee County, Florida, and Petitioner has resided in either [REDACTED] or [REDACTED] pursuant to the directives of the Department of Children and Family Services.

3. During the 2003-2004 school year, Petitioner attended the [REDACTED] Elementary School in Orange County ([REDACTED]). The IEP team at [REDACTED] developed an IEP for Petitioner dated August 12, 2003 (the [REDACTED] IEP). Petitioner received exceptional student education in program areas identified in the

record as mentally handicapped, speech and language impaired, and traumatic brain injured.

4. On September 15, 2004, Petitioner's father filed a request for due process hearing to challenge the [REDACTED] IEP. ALJ William F. Quattlebaum conducted the due process hearing on January 8 and 9, 2004. On March 25, 2004, ALJ Quattlebaum issued a Final Order in [REDACTED] v. Orange County School Board, DOAH Case No. 03-3299E. In relevant part, ALJ Quattlebaum found that the [REDACTED] IEP provided FAPE to Petitioner.

5. Petitioner's father appealed the Final Order to the Fifth District Court of Appeal in Case No. 5DCA04-1318. Petitioner's father also filed a Writ of Certiorari with the Florida Supreme Court seeking review of any rulings by ALJs and the appellate court.

6. Sometime prior to August 18, 2004, the Orange County School Board transferred Petitioner from [REDACTED] to [REDACTED]. On August 18, 2004, Petitioner enrolled in the Hillsborough County School District (the District). A representative of [REDACTED] registered Petitioner in the [REDACTED] [REDACTED] [REDACTED] [REDACTED] (the [REDACTED]) and provided appropriate staff at the [REDACTED] [REDACTED] with a copy of the [REDACTED] IEP.

7. From August 18, 2004, through the date of the due process hearing conducted on November 15, 2004, Respondent provided educational services to Petitioner pursuant to the

██████████ IEP. Respondent timely requested and received Petitioner's educational records from ██████████. Petitioner's father has repeatedly refused to cooperate with the appropriate District staff to meet and make appropriate revisions to the ██████████ IEP.

8. The request for due process hearing contains several allegations. The request alleges that: the Orange County School Board's transfer of Petitioner from ██████████ to ██████████ denies FAPE to Petitioner and violates relevant procedural safeguards; the ██████████ IEP is inappropriate for Petitioner's unique educational needs; Petitioner's unique educational needs require a residential placement in Manatee County; and Respondent is discriminating against Petitioner.

#### CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the parties to this proceeding. DOAH provided adequate notice of the due process hearing. Prior to any due process hearing, the parties waived the requirement for a final order within 45 days of August 20, 2004.

10. DOAH is barred by the doctrine of collateral estoppel from determining the assertion in the due process request that the ██████████ IEP does not adequately address Petitioner's unique educational needs. Deweese v. Town of Palm Beach, 688 F.2d 731, 733 (11th Cir. 1982), rev'd on other grounds, 812 F.2d 1365, 1366 n.4 (11th Cir. 1987) (stating that the law of

collateral estoppel expounded in the original case remains the law). Petitioner's father previously litigated the appropriateness of the [REDACTED] IEP, and ALJ Quattlebaum entered a final order that Petitioner's father has appealed. The determination of the issue in the prior case was a critical and necessary part of the Final Order. Petitioner's father had a fair and full opportunity to challenge the [REDACTED] IEP in the earlier proceeding. Greenblatt v. Drexel Burnham Lambert, Inc., 763 F.2d 1352, 1360 (11th Cir. 1985); Precision Air Parts, Inc. v. Avco Corp., 736 F.2d 1499, 1504 (11th Cir. 1984).

11. DOAH lacks in personam jurisdiction in this proceeding over Manatee County and the Orange County School Board. Each entity is an indispensable party to any remedy that would adequately address relevant claims in the due process request.

12. The absence of the Orange County School Board as a party to this proceeding means that the School Board did not have a fair and full opportunity to show that the transfer from [REDACTED] to [REDACTED] was appropriate and that the transfer complied with relevant procedural safeguards. Similarly, the absence of Manatee County as a party to this proceeding means that Manatee County did not have a fair and full opportunity to refute the allegation that the transfer of Petitioner to a residential placement in Manatee County is necessary to adequately address Petitioner's unique educational needs. Moreover, DOAH has no authority to order Respondent to place

Petitioner in a residential facility in Manatee County over which Respondent has no control.

13. There is no evidence of discrimination against Petitioner. The only evidence of record is that appropriate School District representatives have made reasonable and repeated efforts to meet with Petitioner's father to revise the [REDACTED] IEP. As of the date of the due process hearing, Petitioner's father had not met with School District personnel to revise the [REDACTED] IEP.

ORDER

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

ORDERED that there is no evidence of discrimination against Petitioner, and the remaining claims in Petitioner's request for a due process hearing are dismissed based on the doctrines of collateral estoppel and for lack of in personam jurisdiction. The file of the Division of Administrative Hearings is closed.

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

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DANIEL MANRY  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of December, 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.